



Montana Fish, Wildlife & Parks

Montana Fish, Wildlife and Parks
Fargo Coulee CE EA
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June 23, 2017

Dear Interested Parties:

Montana Fish, Wildlife and Parks (MFWP) is proposing to purchase and manage a conservation easement (CE) on Mark Machler's property near Roy, MT. This CE, called the "Fargo Coulee Conservation Easement," will protect and conserve in perpetuity ~ 2,700 deeded acres of unbroken sagebrush-grassland habitat, bisected by Blood Creek. This CE will also guarantee free public access for hunting and other recreational pursuits on these deeded CE lands, satisfying MFWP's objectives in providing access and recreational opportunities to the public.

MFWP is currently seeking review and public comment on the Draft Environmental Assessment (EA) for this proposed CE. The EA and associated documents, including the Draft Deed of Conservation Easement and Draft Management Plan may be obtained by viewing MFWP's internet website <http://fwp.mt.gov/news/publicNotices/>. Hard copies or CD copies of these documents are available via e-mailing lhajek@mt.gov, by phoning (406) 454-5840, or by written request to Region 4 FWP, 4600 Giant Springs Road, Great Falls, 59405. Comments may be made online on the EA webpage or may be directed by mail or e-mail to the addresses above. Comments must be received by MFWP no later than 5:00pm on August 4, 2017.

As part of the decision-making process under the Montana Environmental Policy Act (MEPA), I expect to issue the Decision Notice for this EA soon following the end of the comment period. The Draft EA will be considered as final if no substantive comments are received by the deadline listed above. The Montana Fish and Wildlife Commission has the final decision-making authority over MFWP CE proposals, and the Montana Board of Land Commissioners will also be asked to render its decision on this proposal.

Sincerely,

A handwritten signature in blue ink that reads "Gary Bertellotti". The signature is fluid and cursive, with the first name "Gary" being more prominent.

Gary Bertellotti
Regional Supervisor

DRAFT Environmental Assessment

Fargo Coulee Conservation Easement



June 2017



**Montana Fish,
Wildlife & Parks**

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A. Draft Machler Deed of Conservation Easement

B. Draft Machler Conservation Easement Management Plan

Appendices: A. FWP Minimum Standards for Grazing Livestock

B. Grazing System

C. Hunting and Public Access Rules

D. Hunting and Public Access Map

E. Wildlife Friendly Fence Guidelines

1.0 Purpose of and Need for Action

1.1 Proposed Action

Montana Fish, Wildlife, and Parks (hereafter, “MFWP” or “the Department”) proposes to purchase a perpetual Conservation Easement (CE) to protect wildlife habitat and ensure continued public access on the Mark Machler property (hereafter, “the Ranch” or “the Land”). The CE, called the Fargo Coulee CE, would protect approximately 2,695 acres of primarily big sagebrush steppe and mixedgrass prairie in east-central Fergus County, approximately two miles north of Roy, MT in hunting district (HD) 417 (Figure 1). The property is bisected in two sections by Blood Creek, a tributary of Box Elder Creek (Figure 2).

The current landowner Mark Machler seeks to sell his property but wants to take steps to conserve it in perpetuity. Therefore, he approached MFWP about placing a CE on the Ranch prior to selling it to an interested neighbor, Rick Thompson, who currently leases the property for cattle grazing.

Figure 1. Sagebrush steppe and mixedgrass prairie habitat on the proposed Fargo Coulee CE.



Figure 2. Blood Creek, an ephemeral tributary of Box Elder Creek, which bisects the proposed Fargo Coulee CE.



1.2 Need for Action

The Ranch consists of three habitats of statewide importance: lowland/prairie grassland, sagebrush steppe & sagebrush-dominated shrubland, and riparian and wetland, as identified in Montana's Comprehensive Fish and Wildlife Strategy (CFWCS) as Tier I Community Types in Greatest Need of Conservation (see Section 1.5). Additionally, these three habitat types support several state Species of Concern. From a statewide and an eco-region perspective, riparian and shrub grassland habitats are important habitats that are highly productive, in need of protection and conservation, and are threatened by subdivision or land-use conversions (e.g., conversion to cropland).

The Ranch is also located in MFWP Administrative Region 4's Sage Grouse Core Area Focal Area, as identified by the 2015 State Wildlife Action Plan (SWAP; see Section 1.5), and has numerous active sage grouse leks within a 4-mile radius. The Machler property is part of a larger landscape key to maintaining viable populations of sage grouse, as well as providing important sharp-tailed grouse, mule deer, pronghorn, and native non-game species habitat. Several Species of Concern (in addition to Greater Sage-Grouse) have potential distribution overlapping the

property. These species include: Baird's Sparrow, Sprague's Pipit, Long-billed Curlew, and Brewer's Sparrow.

The proposed CE also adjoins 1,920 acres of DNRC lands currently inaccessible to the public. Little access exists in this area, and a CE would provide 4,620 acres for public recreation and hunting (Attachment B, Appendix D). Due to its proximity to active leks, the complete lack of sodbusting or native ground conversion, and the riparian habitat afforded by Blood Creek, the area provides good nesting, brood-rearing, and winter habitat for sage grouse (Figure 3).

Figure 3. A recently-used sage grouse nest on the Machler CE.



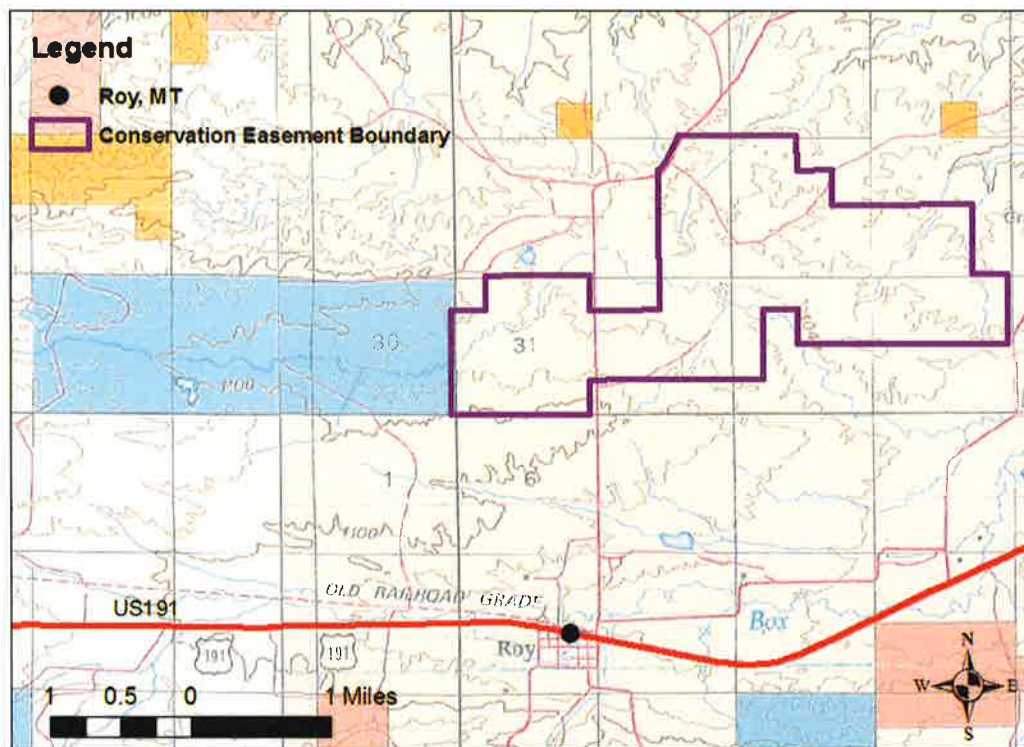
The majority of sagebrush-grassland habitat in Montana is privately-owned, and the single greatest threat to this habitat is cultivation, which has increased substantially in central and eastern Montana. Therefore, it is important to conserve as much native sage-brush grassland as possible. Additionally, livestock grazing is the primary land use in the area and responsible grazing management is crucial to maintaining the integrity of the prairie grassland and sagebrush landscape here. Future sale of the ranch to a buyer, without the protections afforded with this

proposed CE, is a concern since a new owner or owners may change current land uses. This in turn could influence existing wildlife habitat values, and/or eliminate public access that would otherwise be made available on or through the property to adjacent public lands.

1.3 Location

The Ranch lies approximately 1.6 miles north of Roy, Montana, 30 miles northeast of Lewistown, Montana, and 23 miles north-northeast of Grass Range, Montana, in Township 19N, and Range 22E, and Sections 27, 28, 29, 31, 32, 33, and 34. The parcel borders three DNRC sections to the west (Figure 4).

Figure 4. Deeded Mark Machler property and adjacent DNRC lands.



1.4 Relevant Authorities

The following laws and rules are applicable to the proposed action:

- The Habitat Montana program authorized by Montana Code Annotated (MCA) § 87-1-241 (accompanying regulations found at Admin. R. Mont.12.9.509) seeks to conserve Montana's wildlife populations and natural ecological systems. Habitat Montana acquisition projects are also intended to: 1) conserve land, water, and wildlife; 2) contribute to hunting and fishing opportunities; 3) contribute to non-hunting recreation; 4) protect open space and scenic areas; 5) promote habitat-friendly agriculture; and 6) maintain the local tax base through continued payments of property taxes.

- FWP has the authority to acquire land or interests in land easements upon lands (§ 87-1-MCA 209) that are suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection; for public hunting, fishing, or trapping areas; and for state parks and outdoor recreation.
- State statute § 76-6-201 through 204 authorizes the use of conservation easements, describes the duration, and permissible types of easements.

1.5 Relevant Plans

2005 FWP Comprehensive Fish & Wildlife Management Strategy:

Most of the proposed Fargo Coulee CE boundary falls within a Tier I Focus Area (Montana Glaciated Plains), which is one of the state's geographic areas of "Greatest Conservation Need" according to Montana's Comprehensive Fish & Wildlife Conservation Strategy (CFWCS 2005). The Montana Glaciated Plains are primarily level to rolling till plains dominated by sagebrush grasslands and mixed short-grass prairie and cropland. The main natural disturbances to this area include drought and fire, while livestock grazing and dryland farming are the primary land uses.

Portions of the Machler property within and without this Tier I Focus Area include Tier I Community Types of Greatest Conservation Need (CTGCN): Sagebrush and Salt Flats, Grassland Complexes, Mixed Shrub/Grass Associations, and Riparian and Wetland, and Prairie Streams. These Tier I Community Types have a low or declining status and efforts for conservation should be extended to and beyond the focus areas addressed in the CFWCS. Tier I species associated with this focus area and associated community types that are or may be found within the boundaries of the Ranch include Northern Leopard Frog, Western Hog-nosed Snake, Bald Eagle, Greater Sage-Grouse, Mountain Plover, Long-billed Curlew, Burrowing Owl, Townsend's Big-eared Bat, and Black-tailed Prairie Dog (CFWCS 2005).

2005 State Wildlife Action Plan:

Montana's State Wildlife Action Plan (SWAP), updated in 2015, further identifies specific focal areas within the state that contain the terrestrial CTGCN, as identified by the 2005 CFWCS. These focal areas identify more specific geographic areas on which to focus conservation efforts to conserve these CTGCN. The proposed CE is located completely within MFWP Region 4's Sage Grouse Core Area Focal Area.

As provided (under different names) in the 2005 CFWCS, the Tier I CTGCN identified in this Focal Area that overlap the Machler property include Lowland Prairie Grassland and Sagebrush Steppe & Sagebrush-dominated Shrubland. The Lowland Prairie Grassland and Sagebrush Steppe & Sagebrush-dominated Shrubland systems cover much of the southern and eastern two-thirds of Montana. The dynamics of Lowland Prairie Grassland communities are primarily a function of climate, but the magnitude of changes that can occur is influenced by grazing intensity and fire frequency. Plant productivity, distribution, and species richness are a product of environmental conditions (the temporal and spatial distribution of soil moisture and topography). In many areas of the Sagebrush Steppe & Sagebrush-dominated Shrubland community, overgrazing has put these areas in a disclimax condition. Fire has a negative effect on this area

due to the sensitivity of sagebrush to fire, and cheatgrass invasion tends to occur in areas where perennial grasses and forbs have been stressed or reduced.

While considerable public land exists in this area, limited protections exist on private lands. High potential exists in this area for partnerships with other landowners and the NRCS. The intact sagebrush grassland habitat and the property's proximity to active sage grouse leks further support the possibility for partnerships.

1.6 Decision to be Made

The decision to be made is whether MFWP should move forward with the proposed purchase of a CE on the 2,695-acre Mark Machler property. Following completion of the draft environmental assessment (EA) and public comment period, the MFWP Region 4 supervisor will issue a decision notice that makes a recommendation to the Fish and Wildlife (FW) Commission on a course of action. This course of action could be either of the Proposed Action or the No Action alternatives, or an action that is within the scope of the analyzed alternatives.

As with other MFWP conservation projects that involve land interests, the FW Commission and the State Board of Land Commissioners would make the final decision. This draft EA and the comments MFWP receives are part of the decision-making process.

2.0 Alternatives

2.1 Alternative A: Proposed Action, purchase of a Conservation Easement on the Mark Machler property

The Department would purchase a CE on the approximately 2,695-acre ranch using Habitat Montana funds and an ALE grant from the NRCS for the protection of fish and wildlife habitats. Anticipated cost of the CE prior to the ALE grant is \$897,000. With the ALE grant, total expenses from Habitat Montana are expected to be \$441,625. Anticipated monitoring costs of the CE by MFWP staff is estimated to be \$1,000 annually.

Under the terms of the Deed of Conservation Easement, each party would retain or receive the following rights. See Attachment A for a copy of the Draft CE.

Rick Thompson, after purchasing the deeded CE lands from Mark Machler, and future landowners (hereafter, "Landowner(s),") would retain the rights to:

1. Raise, pasture, and graze livestock, provided that livestock grazing maintains or enhances the Conservation Values protected by this Easement and incorporates the principles of a rest-rotation grazing system as described in Attachment B, Appendix B;
2. Develop and maintain water resources, including stock water ponds, water wells, spring developments, and pipeline systems necessary for grazing, wildlife, and all agricultural purposes allowed by this Easement, provided any new water development or change in water use or distribution may not adversely impact the Conservation Values, including instream flow, perennial or ephemeral streams, wetlands, or riparian vegetation. The Landowner reserves the right to plant native vegetation in the riparian areas of the Land

to encourage creek bank stabilization and to restore and reclaim damaged or degraded riparian habitats;

3. Use agrochemicals for control of noxious weeds and insects as defined by the State of Montana or other lawful authority with jurisdiction;
4. Construct, remove, maintain, renovate, repair, or replace dams and structures necessary for watering livestock. However, barriers that inhibit the movement of fish or wildlife or any canal, irrigation structure, or ditch that would have significant impacts on fish or wildlife habitat or fish or wildlife migration on and through the Land is prohibited;
5. Construct, remove, maintain, renovate, repair, or replace (with wildlife-friendly) fences necessary for generally accepted agricultural activities. However, any fence that inhibits the movement of fish or wildlife, or that would have significant impacts on fish or wildlife habitat or fish and wildlife migration on and through the Land is prohibited;
6. Remove, maintain, repair, or replace roads in their current location as identified in the baseline documentation, provided the roads do not significantly impact wildlife habitat or wildlife migration on and through the Land;
7. Maintain, renovate, repair, or replace utilities existing on the Land;
8. Use motor vehicles in the ordinary course of the Landowner's exercising the permitted uses on the Land, but only in a manner that does not significantly impact vegetation or the natural habitat of fish and wildlife species;
9. Regulate public use at all times, subject to the public's recreational and hunting access described in the terms of the Easement; and
10. Grant, sell, exchange, devise, gift, convey, transfer, or dispose of all of Landowner's right, title, estate, and interest in the Land in one complete parcel only.

The proposed conservation easement would also prohibit the removal or destruction of riparian or native rangeland vegetation, manipulation of riparian and wetlands areas, transfer of existing water rights, renting or leasing of the parcels for commercial recreation (e.g., outfitting businesses), granting of utility easements that are inconsistent with the terms of the CE, establishment of commercial feedlot or alternative livestock businesses, and processing and disposal of hazardous materials. In addition, the Landowner would be prohibited from exploring for, developing, mining, producing, or otherwise extracting any minerals, oil, natural gas, coal-bed methane or other hydrocarbon resources that they own on or under the surface of the project parcels. Any third party mineral right holder would need to work with the MFWP and Landowner to minimize surface impacts to the Land.

The Department would acquire the rights to:

1. Identify, preserve, protect, and enhance, in perpetuity, the Conservation Values of the Land;
2. Enter the parcel to monitor compliance of the CE terms and rights to observe, study, and make scientific observations of the Land's fish, wildlife, habitat, and ecosystems upon prior notice to the Landowner;
3. Establish and maintain vegetation monitoring transects and enclosures upon prior written notice to the Landowner;
4. Place and replace small markers to identify boundaries and other reference points on the parcel; and

5. On behalf of the general public, of access by non-motorized means from public roads and right-of-ways for the purpose of hunting, trapping, wildlife viewing, and other recreational activities in accordance with the terms of the CE.

As a component of the CE, a rest-rotation grazing system would be developed to encompass the Ranch's 2,695 deeded acres, divided into four pastures (see Attachment B, Appendix B, page B-2 for a map of the designated pastures). Highlights of the grazing system include:

- The three pastures east of Mabee Road provide summer grazing, in which one pasture would be available for grazing May 1 to July 15 (growing season), one pasture would be available for grazing July 15 to September 15 (post-seedripening), and the remaining pasture would be rested from livestock grazing that entire year. These pastures rotate each year, so that each pasture receives two years of growing-season rest and one year of growing season use every three years.
- The fourth pasture, west of Mabee Road, would be available for livestock grazing in the fall, after weaning, pre-conditioning, and selling of the calves, from October 15 to November 15, prior to winter feeding.
- The Department would monitor grazing plan adherence to assess effectiveness, functionality, and Landowner compliance. Livestock use and distribution would also be assessed annually.

Because no farming activity currently exists on the Ranch, no farming activity would be permitted on the Land.

2.2 Alternative B: No Action and no purchase of a Conservation Easement on the Mark Machler property

For the No Action Alternative, MFWP would not purchase a CE on the Mark Machler property. The Landowner would likely sell the property to the current lessee or a different operator. In the future, the potential for the Ranch to remain in its current, unbroken native rangeland state, or the possibility for public access to or across the property, would be uncertain.

3.0 Affected Environment

3.1 Land Use

The Mark Machler property is a portion of a working cattle ranch, leased by Rick Thompson. Currently, Mr. Thompson runs approximately 100-head of black angus cows and calves on the 2,695 deeded Ranch acres and additional private property he owns, outside the scope of this CE.

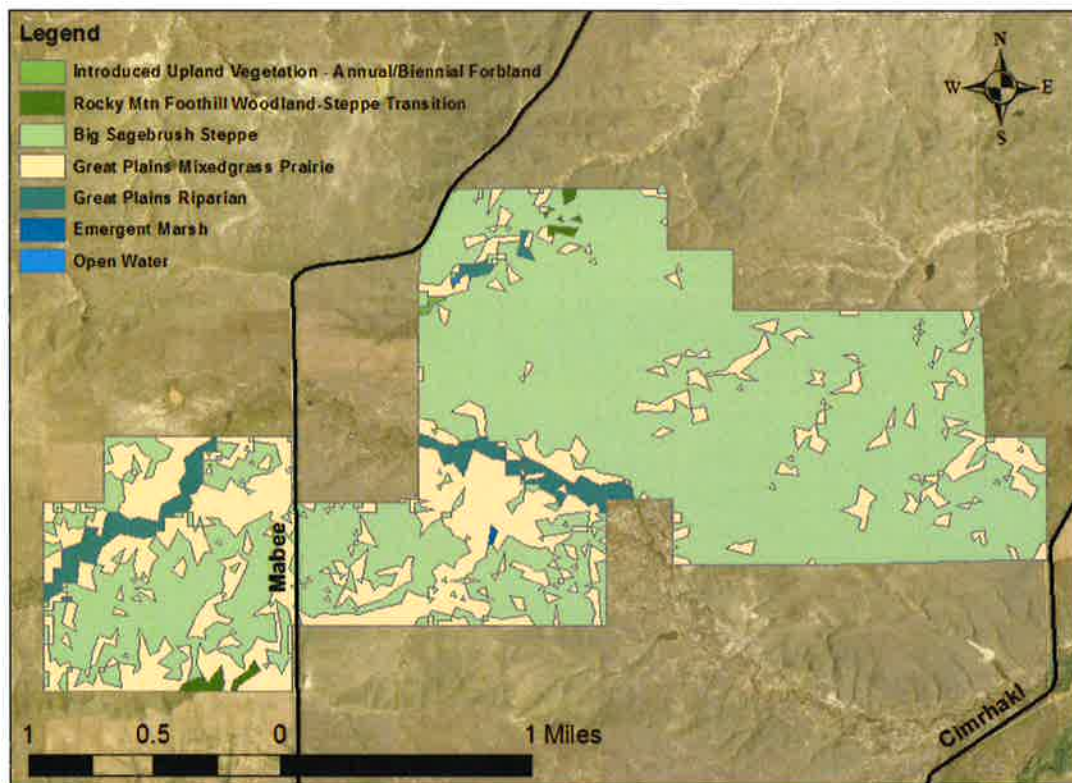
The Ranch's acreage consists of 2,601 acres native range, 2 acres non-native range, and 91 acres riparian-associated habitats. No buildings, other development, or cultivated farm ground occurs on the Ranch.

3.2 Habitat

The Mark Machler property provides important year-round habitat for sage grouse, sharp-tailed grouse, mule deer, and pronghorn, and a variety of small mammals and other nongame species. The Ranch also provides seasonal habitat for waterfowl, mourning doves, migratory raptors, and passerine birds.

The Ranch's native range consists of big sagebrush steppe, mixedgrass prairie, and woodland-steppe transition. The non-native range is a small patch of introduced upland vegetation—primarily annual and biennial forbland, along the western edge of the northernmost pasture. Riparian-associated habitat types include riparian, emergent marsh, and open water (Figure 5).

Figure 5. Habitat breakdown on the Fargo Coulee CE.



Big sagebrush steppe habitat in this area is dominated by Wyoming big sagebrush. Western wheatgrass is the dominant grass species in this system, but bluebunch wheatgrass, prairie junegrass, and cheatgrass are also prevalent on the property. Common forb species include Hood's phlox, prickly pear, scarlet globemallow, yarrow, and fringed sage. A more detailed summary of plant species and vegetation communities on the property can be found in the Management Plan (Attachment B, Appendix F).

Under the Ranch's current management system, the native range vegetation is considered in good condition.

3.3 Terrestrial Species

Primary game/furbearer species inhabiting the Ranch and adjoining lands include sage grouse, sharp-tailed grouse, mule deer, pronghorn, bobcat, coyote, red fox, badger, racoon, and skunk. Elk exist on private lands to the north, but have yet to regularly range as far south as the Ranch.

Current ungulate population estimates range from 50-100 deer and pronghorn in the immediate area, depending on season and circumstance. Antelope numbers will be higher during the winter as some migrate through the area.

The Ranch and surrounding area also provides habitat or potential habitat for several Montana Species of Concern, or Species of Greatest Conservation Need. These species (in addition to sage grouse) include: northern leopard frog, western hog-nosed snake, bald eagle, ferruginous hawk, mountain plover, Baird's sparrow, Sprague's pipit, long-billed curlew, burrowing owl, Townsend's big-eared bat, and black-tailed prairie dog (CFWCS 2005, Montana Natural Heritage Program).

Additional species that are likely permanent or seasonal residents of the Ranch are: red-tailed hawk, rough-legged hawk, short-eared owl, vesper sparrow, field sparrow, assorted waterfowl, other passerines, prairie rattlesnake, and numerous small mammals.

Game damage has not been a concern in the immediate vicinity of the Ranch, however, if elk numbers in HD 417 and adjacent HD 412 continue to expand beyond in numbers and distribution; this may become an issue in the future.

3.4 Fisheries Species and Water Resources

The headwaters of the Sacajawea River and Blood Creek, a tributary of Box Elder Creek, are included within the boundaries of the Ranch. Both of these creek portions are ephemeral and not known to sustain fisheries.

3.5 Recreational Opportunities

Minimal to no hunting has traditionally occurred on the Mark Machler property, especially in recent years with below-average deer, antelope, and upland game bird numbers. The Ranch's property is located within MFWP Deer/Elk HD 417 and Antelope HD 480. With the purchase of this CE, hunting, trapping, wildlife viewing, and other non-motorized recreational activities will be permitted (see Attachment B, Appendices C-D, pages C-1, D-1 for access rules and a map on the Fargo Coulee CE).

4.0 Predicted Environmental Consequences

4.1 Land Use

Proposed Action:

If the proposed CE were approved, there would be no impact to the productivity or profitability of the Ranch. The traditional uses of the Land would be maintained under the terms of the proposed CE.

The terms of the CE do require some of the current land management practices to change, such as the implementation of a rest-rotation grazing system, and prohibit others, such as disturbances to riparian areas or the breaking up of native ground. To implement and accommodate the grazing plan, the Landowner and MFWP may develop a cost-share agreement for new fence construction and pasture system changes. Whenever possible, pasture improvements would be cost-shared between the Landowner and MFWP.

The proposed CE would serve to maintain future management options for protecting, conserving, and propagating wildlife by perpetually preserving the natural habitats, providing for the continuation of traditional ranching operations, and expansion of public recreation on private lands.

No Action:

If the proposed CE were not approved, the Ranch would be sold, possibly to a different operator. This no action alternative could potentially result in substantive changes to the current lessee's operation, as well as in land use practices that may negatively impact wildlife habitat quality (particularly for sage grouse), and would provide no guarantee for permitted public recreation.

4.2 Vegetation

Proposed Action:

This proposed action would result in a positive impact to vegetation resources on the Land. The terms of the Easement protect the quantity, quality, and character of the native upland communities found on the Ranch. Many shrub species are important to wildlife for cover and forage values. The removal, control, or manipulation of shrub species important to wildlife by any means would be prohibited within the terms of the CE unless such activity is mutually agreed upon by the Landowner and MFWP. These prohibitions do not apply to the routine clearing or control of brush in connection with the construction and maintenance of roads and fences permitted under the CE.

The rest-rotation grazing system, as described in Appendix B of the Management Plan (Attachment B), would maintain and enhance the vigor and productivity of vegetation on the Ranch's parcels over time, as well as have a positive effect on the condition of the vegetation on the leased acres. Riparian habitat along Blood Creek and the headwaters of the Sacagawea River would be expected to improve as well through implementation of CE terms.

The proposed action also ensures the Land's primary use in the future would be livestock grazing, which depends on maintaining productive vegetation. The Department would be responsible for establishing a Baseline Inventory Report that would document wildlife habitat, plant communities, roads, fences, and water developments that will serve as a baseline for future monitoring. Additional vegetation photo points and other monitoring plots will be established and maintained by MFWP in appropriate areas to examine vegetation condition and long- and short-term changes as a measure of management effectiveness.

No Action:

Without protection of the quantity, quality, and character of the native plant communities found on the property, there would likely be no change in the short-term if the property is maintained under the current operating framework. However, if the Land is sold to an alternative buyer, there would be no conservation measures put in place to maintain the productivity of the Land, and sodbusting or other development and disturbance may occur. Future impacts to native vegetation and overall productivity of the land could be considerable and potentially detrimental to wildlife if any changes to land uses occurred.

4.3 Fish and Wildlife Resources

Proposed Action:

The proposed CE for the Mark Machler property would benefit a variety of wildlife. The terms of the CE conserve and protect the Land as agricultural and open space to provide year-round and seasonal habitat for many of Montana's native wildlife species. Conserving native plant communities is important for most of Montana's indigenous wildlife species. Protection from subdivision and conversion to tillage agriculture, and implementation of a rest-rotation grazing system would ensure adequate quantity and quality of forage and cover for a variety of wildlife species. No adverse effects are expected on the diversity or abundance of game species, non-game species or unique, rare, threatened, or endangered species.

Wild game populations fluctuate over time and may periodically exceed FWP management objectives, thus contributing to above-average wildlife use of Ranch property, resulting in game damage problems. Such circumstances on the Ranch would be managed through public hunting during a general season framework. Game damage assistance and prescribed hunts would be provided on an "as needed" basis to the Ranch.

The proposed action would ensure public hunting access to the CE lands in perpetuity. Hunting and other non-motorized recreation on Ranch lands would not negatively impact the overall distribution and population of game species in the area. The seasonal take of game species would continue to be evaluated on an annual basis by MFWP biologists, with recommendations being submitted to the FW Commission for the annual hunting season setting process.

New fencing is required for implementing the proposed rest-rotation grazing system. Any new fencing construction would follow the guidelines described in Attachment B, Appendix E (Landowner's Guide to Wildlife Friendly Fences) to ensure the fences do not impede wildlife movements (particularly antelope and sage grouse) within and through the designated pastures. Some pasture boundary fences already exist on the ranch and do not impede wildlife movements.

No Action:

Without terms to conserve the Land as agricultural and open space to provide year-round habitat for many of Montana's native wildlife species, there would likely be no change in the short-term if the Ranch is kept under its current ownership. However, if there were a change in ownership, there would be no provisions preventing development for recreational purposes or changes in land use that could be detrimental to wildlife species in the future.

The selection of the No Action Alternative could allow a future landowner(s) to close the land to public hunting, which would result in a lack of valued access to natural habitat and to adjoining state lands.

4.4 Water Resources

Proposed Action:

Current agricultural uses on the Ranch have proven to be compatible with maintenance of water quality. However, if the proposed CE is implemented, positive impacts should be realized in surface and ground water as a result of improvements in soil condition by implementing the rest-rotation grazing system and protection of riparian areas. Additional water improvements could be developed in order to improve livestock distribution, range conditions, and riparian vigor throughout the Ranch as long as the Conservation Values are not negatively impacted.

No Action:

There would likely be no impact in the short-term if the No Action Alternative is chosen. However, if the Land was developed, sodbusted, or sold without CE protection, there would be no assurances that over time the use of the parcels would not affect water resources and their associated areas (e.g., riparian and wetland).

4.5 Aesthetics and Recreation

Proposed Action:

Implementing the Fargo Coulee CE would provide year-round public recreational opportunities (hunting, trapping, wildlife viewing, etc.) on the Ranch in perpetuity. All permitted activities would be walk-in only and via public roads. Additional kinds of public recreational activities (e.g., camping) may be permitted at the Landowner's discretion.

The level of public recreation on the Ranch may increase with the approval of the proposed CE and the public's awareness of the permitted uses on the CE acres. Furthermore, public recreation on adjacent state lands may increase with designated public access to those lands through the Ranch, however, due to the character of game species in the area, the level of recreation may level off after a few years.

Hunting would be allowed on the Fargo Coulee CE consistent with FW Commission-established regulations and dates/seasons. Trapping would also be permitted of furbearers, nongame wildlife, and predators when those species are present and consistent with FW Commission-established trapping seasons and state laws.

The terms of the CE would prohibit the operation of a commercial hunting business or charging fees (sometimes known as trespass fees) for hunting, trapping, or other recreational activities on the Ranch.

Owing to activities associated with a cattle operation, the Landowner reserves the right to locate, sign, and regulate non-motorized public hunting and recreational access from a minimum of two parking areas adjacent to county or public roads on the Ranch. Additional motorized access (e.g., game retrieval) may be granted at the discretion and by permission of the Landowner.

The terms of the CE would protect open space and scenic values in perpetuity by protecting and improving vigor of native vegetation by maintaining current land use and prohibiting residential development.

No Action:

In the short term and if the property remains under current management, recreational opportunities may occur in a minimum fashion and the scenic values would remain unchanged.

However, if the CE was not approved and the ownership/land management did change, hunting and public access on this Ranch could be further restricted or nonexistent in the future, thereby failing to improve recreational opportunities in the area. There would be no guarantee of public access to the Land or across the Land for recreational purposes. If rural subdivision and/or other developments or sodbusting occur it could change or reduce the existing scenic and recreational values of the area.

4.6 Public Services, Taxes, and Community

Proposed Action:

Under the Proposed Action Alternative, there would be no effect on local or state tax bases or revenues, no alterations of existing utility systems or tax bases or revenues, nor increased use of energy sources. As an agricultural property, the Land would continue to be taxed as it has before.

However, the terms of the CE would restrict future residential and commercial developments on the Ranch's lands.

No Action:

Identical to the implementation of the Proposed Action, the No Action Alternative would not impact local taxes and public services if the Land continued to be maintained as a working ranch. However, future ownership changes could allow greater potential for changes in land use classifications (e.g., agricultural to recreational) that could increase local property taxes for the county. Also, a change in ownership and land use may lead to subdivision and or additional residential development, which may be accompanied by higher demand for utilities, roads, and other services that would have to be partially or wholly provided by state and local governments.

4.7 Cumulative Effects

The approval of the Machler Deed of Conservation Easement by MFWP would contribute to the preservation of important sagebrush grassland and riparian habitat for the benefit of numerous resident and transient wildlife species.

The implementation of a rest-rotation grazing system for the deeded land is expected to be of benefit to the native vegetation in restoring and maintaining range health. In addition to improving the vigor of native vegetation, over the long term the grazing program would improve the amount of forage and/or cover available to wildlife, thus potentially assisting in the improvement of their health as well.

5.0 Resources Considered but Eliminative from Detailed Analysis

The Montana Environmental Policy Act, MCA § 75-1-101 *et seq.* (MEPA), provides for the identification and elimination from detailed study of issues which are not significant or which have been covered by a prior environmental review, narrowing the discussion of these issues to a brief presentation of why they would not have a significant effect on the physical or human environment or providing a reference to their coverage elsewhere (ARM 12.2.434(d)). While these resources are important, they were either unaffected or mildly affected by the Proposed Action and the effects could be adequately mitigated.

5.1 Land Resources

Proposed Action:

The proposed CE would ensure that the Land's resources are maintained. Some soil-disturbing activities would occur under normal ranching operations and maintenance to existing ranch facilities. The terms of the proposed CE would prohibit large scale, adverse changes to the existing physical attributes of the ranch.

Considering information gathered from communication with the BLM Lewistown Field Office regarding the probability of minerals resources being located within the Ranch, the likelihood for subterranean resource development is low. Overall, MFWP predicts the potential for long-term change to existing land resources is expected to be minimal.

No Action:

If the Ranch remained under current management, impacts to the Land's resources are expected to be identical to those described for the Proposed Action. However, if the land were sold to an alternative operator, disturbance of soils from more intensive agricultural practices, residential development, mineral, or other commercial uses may occur.

5.2 Air Quality

The Department anticipates there would be no changes to the ambient air quality for either the Proposed Action or No Action Alternatives.

5.3 Noise and Utilities

The Department anticipates there would be no changes to the current noise levels or utilities for either the Proposed Action or No Action Alternatives. Under the terms of the proposed CE, the Ranch would retain the right to maintain, repair, or replace utilities existing on the property. Additionally, the proposed CE would allow for new utilities or utilities leases/right of ways as long as they are consistent with the terms of the CE and have no negative impacts on sage grouse or other wildlife species.

5.4 Risk and Health Hazards

The Department anticipates there would be no changes to risks and health hazards for either the Proposed Action or No Action Alternatives.

5.5 Cultural and Historic Resources

The Proposed Action and No Action Alternatives under current management regime would not cause a change in land use, so MFWP anticipates there would be no impacts to cultural sites. If the Ranch was sold to an alternative operator, changes in land uses may increase impacts to cultural resources occurring on the Ranch.

6.0 Need for an Environmental Impact Statement

Based on the significance criteria evaluated in this EA, is an Environmental Impact Statement (EIS) required?

No. The proposed CE would affect approximately 2,695 acres in that it would protect and conserve important wildlife habitat and provide public access in perpetuity with minimal effects (positive or negative) to the current land uses (agricultural—livestock operations) and to the existing natural resources of the property.

This EA revealed no significant (negative or positive) impacts from the Proposed Action. The significance criteria described in ARM 12.2.431 were used in this determination. Based upon the above assessment, an EIS is not required and an EA is the appropriate level of review.

Some limited, minor impacts from the Proposed Action were identified in this EA, such as anticipated positive changes to vegetation from the proposed rest-rotation grazing system, and possibly an increase in the number of people accessing the property for permitted recreational activities.

7.0 Public Participation

7.1 Public Involvement

Prior to the preparation of this draft EA, a formal public participation specific to the proposed purchase of this CE began with a 30-day scoping process. This scoping process represented the

first step in the environmental review process, wherein MFWP invited the public to identify any issues and concerns related to this CE proposal. Copies of the scoping notice were mailed to neighboring landowners, interested parties, and delivered to the Fergus County Commissioners. Additionally, an ad was placed in the Lewistown New-Argus inviting the public to participate and providing instructions on how to provide comment.

Montana Fish, Wildlife, and Parks received two formal comments during the scoping process, as well as fielded questions that did not result in any formal comments. The two comments are summarized below:

- 1) *I encourage FWP to continue with the scoping and planning process to acquire a conservation easement in this property, because there is a willing seller, and the easement would protect in perpetuity sagebrush habitat for wildlife species dependent on sagebrush, and it would open recreational access to this property and three sections of adjacent state land.*
- 2) *We are requesting that the county road easement through the property be removed from the conservation easement or that language will be placed in the conservation easement that exempts Fergus county from all restrictions placed on the conservation easement within the county road right-of-way.*

Pursuant to these comments, MFWP will continue the environmental review process to purchase a CE on the Machler Property. The proposed CE would have no affect on the country road right-of-way, in the same manner as other property ownerships intersected by county roads affect right-of-ways.

Public notification of the EA release and opportunities to comment will be by:

- Two public notices in each of the local papers: *Great Falls Tribune* and *Lewistown News-Argus*
- Direct mailing to adjacent landowners and interested parties;
- Public notice on the MFWP web page: <http://fwp.mt.gov>;
- An email to elected officials, governmental agencies, and interested publics;
- And a public meeting will hosted at the **Lewistown Public Library on July 27 at 7:00 pm.**

Copies of this EA will be available for public review at MFWP Region 4 headquarters in Great Falls, the MFWP Area Resource Office in Lewistown, and on the MFWP web site (<http://fwp.mt.gov/news/publicNotices/>).

7.2 Comment Period

The public comment period will extend for (42) forty-two days beginning June 23. Written comments will be accepted until 5:00 p.m., August 4, 2017 and can be mailed or emailed to the addresses below:

Fargo Coulee CE c/o Sonja Andersen
Montana Fish, Wildlife, and Parks
Lewistown Area Office
PO Box 938
Lewistown, MT 59457

or email comments to: sandersen@mt.gov

7.3 Approximate Timeline of Events

Public Comment Period	July 2017
Decision Notice Published	early August 2017
Project Submitted to Fish & Wildlife Commission	August 2017
Project Submitted to Montana Land Board	August 2017

7.4 Offices & Programs Contributing to the Document

Montana Fish, Wildlife, and Parks
Darlene Edge, Lands Agent, Helena, MT
Kelvin Johnson, Habitat Biologist, Glasgow, MT
Graham Taylor, Region 4 Wildlife Manager, Great Falls, MT
Clint Smith, Fisheries Biologist, Lewistown, MT
Zachary Zipfel, Legal Counsel, Helena, MT

8.0 EA Preparers

Sonja Andersen, Area Biologist, Lewistown, MT

References

Montana Department of Fish, Wildlife and Parks (MFWP). 2005. Montana Comprehensive Fish & Wildlife Strategy. Retrieved from:
<http://fwp.mt.gov/fishAndWildlife/conservationInAction/fullplan.html>

Montana Department of Fish, Wildlife, and Parks (MFWP). 2015. State Wildlife Action Plan. Retrieved from: <http://fwp.mt.gov/fishAndWildlife/conservationInAction/swap2015Plan.html>

Montana Natural Heritage Program. 2016. Species of Concern Report. Retrieved from:
<http://mtnhp.org/SpeciesOfConcern/?AorP=a>

Attachments:

A. Draft Machler CE

B. Draft Machler CE Management Plan

Appendices: A. MFWP Minimum Standards for Grazing Livestock
B. Grazing System
C. Hunting and Public Access Rules
D. Hunting and Public Access Map
E. Wildlife Friendly Fence Guidelines



FARGO COULEE CONSERVATION EASEMENT

Draft MANAGEMENT PLAN

This Management Plan, dated as of _____, 2017, is entered into by **RICK E. THOMPSON**, whose principal address is 60 Windy Ridge Rd, Roy, MT 59471 (hereafter referred to as the “Landowner” or “the Ranch”) and the **MONTANA DEPARTMENT OF FISH, WILDLIFE, AND PARKS**, whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701 (hereafter referred to as “MFWP” or the “Department”).

This Management Plan is being entered into pursuant to Section XX.X. of that certain Deed of Conservation Easement and Public Access Easement granted by Rick E. Thompson to the Department on _____, 2016 and recorded in Book __, Page __ of the records of Fergus County, Montana, (the “Easement”).

This Management Plan serves as a flexible link between Conservation Easement (CE) terms intended to endure in perpetuity and changeable conditions and situations on the land. It is a living document, to be reviewed periodically by FWP, the NRCS, and the Landowner, and to be amended as needed upon agreement by all three parties. Its function is to document strategies for land management in which FWP and the Ranch would be cooperating to ensure consistency with the terms and intent of the CE. The principal strategy is periodic meetings with the landowner and field monitoring of compliance with CE terms. Additionally, this Management Plan details strategies for managing native grazing lands, controlling noxious weeds, and allowing public access as guaranteed in the CE.

The following Appendices are attached and incorporated into this Management Plan by this reference:

- Appendix A. MFWP’s Minimum Standards for Grazing Livestock
- Appendix B. Grazing System
- Appendix C. Hunting/Public Access Rules
- Appendix D. Hunting/Public Access Map
- Appendix E. Wildlife-Friendly Fencing Guidelines
- Appendix F. Montana ALE Grassland Component Plan

I. Introduction

The purpose of the Fargo Coulee Conservation Easement (hereafter, Fargo Coulee CE) is to preserve and protect the conservation values of the Land, particularly the habitat the Land provides for its wildlife as well as the agricultural and historic resources into perpetuity. Historic use of the land is primarily livestock grazing. The 2,695-acre property which makes up the Fargo Coulee CE is located 1.6 miles north of Roy, Montana, 30 miles northeast of Lewistown, Montana, and 23 miles north-northeast of Grass Range, Montana, in Township 19N, and Range 22E, and Sections 27, 28, 29, 31, 32, 33, and 34 (Fergus County, FWP Region 4, hunting district (HD) 417; Figure 1). The Ranch lies within the NRCS's Central Sedimentary Plains (58A-C) Major Land Resource Area, and is primarily composed of unbroken, native sagebrush-grassland, bisected by Blood Creek.

The lands within the Fargo Coulee CE also consist of three habitats of statewide importance: lowland/prairie grassland, sagebrush steppe & sagebrush-dominated shrubland, and riparian and wetland, as identified in Montana's Comprehensive Fish and Wildlife Strategy (CFWCS) as Tier I Community Types in Greatest Need of Conservation. Additionally, these three habitat types support several state Species of Concern. From a statewide and an eco-region perspective, riparian and shrub grassland habitats are important habitats that are highly productive, in need of protection and conservation, and are threatened by subdivision or land-use conversions (e.g., conversion to cropland).

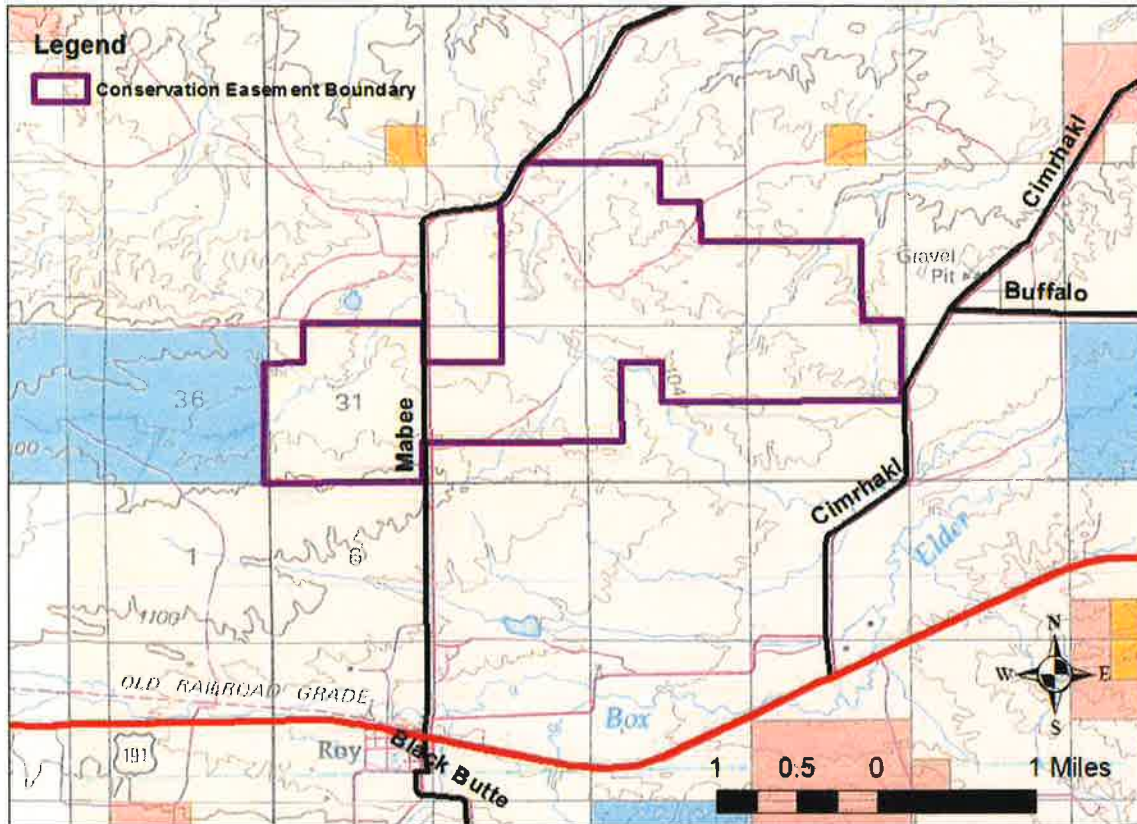
Finally, the Fargo Coulee CE is located within FWP Region 4's "Sage Grouse Core Area Focal Area," as identified by the 2015 State Wildlife Action Plan (SWAP). The Ranch has numerous active sage grouse leks within a 4-mile radius, and due to its complete lack of sodbusting or native ground conversion, along with the riparian habitat provided by Blood Creek, it provides good nesting, brood-rearing, and winter habitat for sage grouse, as well as sharp-tailed grouse, mule deer, and pronghorn. The sagebrush grassland habitat in this area provides not only excellent habitat for sagebrush grassland-affiliated wildlife species, but for significant agricultural conservation values in this area as well—livestock ranching is the dominant industry in this portion of the state. Agricultural resources on the property are further described in the Grassland Component Plan, Appendix F.

The deeded property contains approximately 1,958 acres big sagebrush steppe, 624 acres Great Plains mixedgrass prairie, 12 acres Rocky Mountain foothill woodland-steppe transition, 2 acres annual and biennial forbland (introduced upland vegetation), 1 acre emergent marsh, and 90 acres Great Plains riparian habitat (Figure 2). Total native range is 2,601 acres, or approximately 97% of the property's landcover.

The property borders and provides access to three adjacent sections of DNRC school trust lands, totaling 1,920 acres (Figure 3). The Mabee Road, a county road that travels north out of Roy, bisects and provides legal public access to and through the Ranch. Cimrhakl Road also intersects the Ranch, providing additional access to the southeastern corner. Prior to the establishment of the Fargo Coulee CE, there was limited guaranteed public land accessible from Mabee Road – a 640-acre DNRC section and a 480-acre BLM parcel, totaling 1,120 acres. A few other relatively small public land parcels occur along nearby country roads. Establishment of the Fargo Coulee CE increases the current guaranteed public access off Mabee Road by 4,620 acres, or almost 4-

fold. In addition to public access during Fish and Wildlife Commission-established archery and general seasons, the Fargo Coulee CE will provide year-round access for hiking, shed antler hunting, bird watching, and other recreational pursuits.

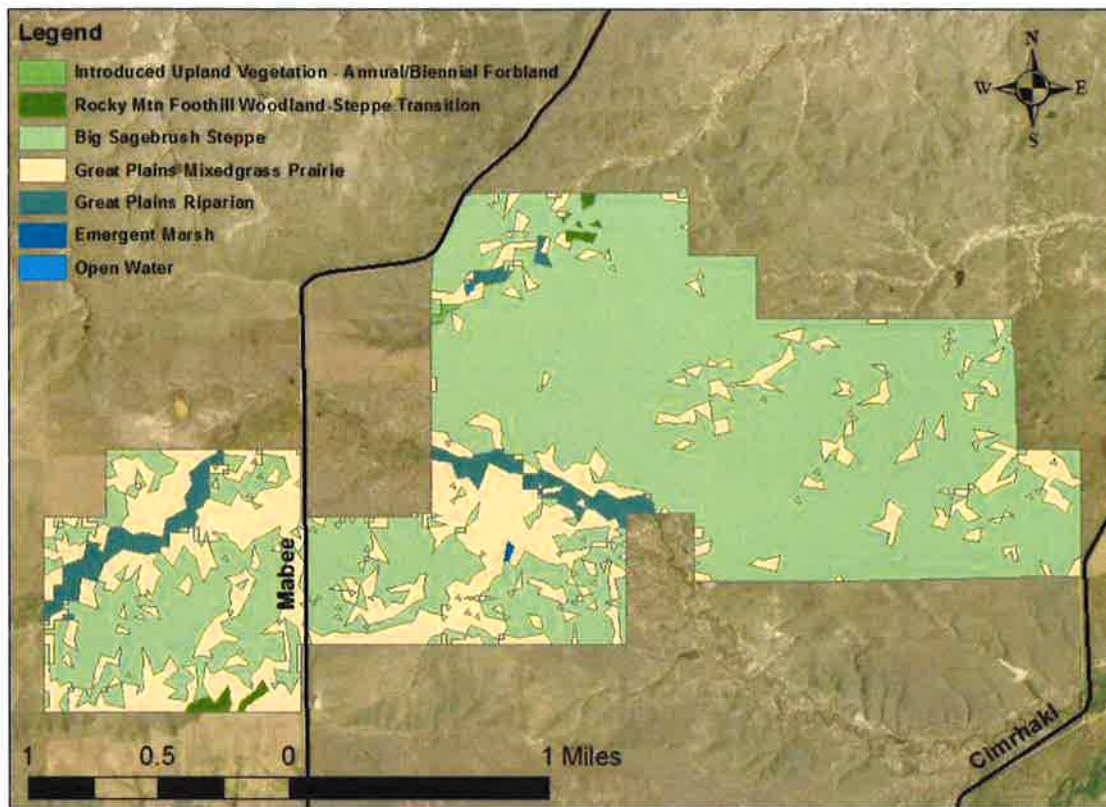
Figure 1. Fargo Coulee CE.



The property is managed as a working cattle ranch, simultaneously maintaining wildlife habitats throughout. Primary game/furbearer species inhabiting the Ranch and adjoining public lands include mule deer, pronghorn, sharp-tailed grouse, mourning doves, and sage grouse. Numerous species of birds and other non-game wildlife inhabit the riparian area along the Blood Creek and upland areas of the ranch. Several Species of Concern (in addition to Greater Sage-Grouse) have potential distribution on the Ranch, including Baird's Sparrow, Sprague's Pipit, Long-billed Curlew, and Brewer's Sparrow.

Funding for the Fargo Coulee CE is being provided through Habitat Montana, which is administered by the Department pursuant to 87-1-209 (Montana Code Annotated), created to acquire interests in "important habitat that is seriously threatened" for the purposes of protecting, enhancing, and regulating "the use of Montana's fish and wildlife resources now and in the future (87-1-201, MCA)." Upon completion, MFWP will hold and monitor the Easement.

Figure 2. Landcover types on the Fargo Coulee CE.



II. Goals, Objectives, Concerns, and Strategies

Goal 1: Conserve and enhance native plant communities within the Fargo Coulee CE boundaries including the native sagebrush-grassland and riparian habitats along Blood Creek, and preserve the integrity of these lands for future generations. By implementation of Easement terms, the quality and amounts of native habitats, important agricultural habitats and wildlife potential currently found on the Ranch shall be maintained without displacing normal private land use.

Objective 1a: *Manage native grassland, shrubland, and riparian vegetation to maintain and improve these plant communities for the benefit of wildlife and livestock.*

Strategy 1a: Maintain big sagebrush steppe, plains grassland, and native riparian habitats and associated streams for wildlife habitat through Conservation Easement protections. Reduced habitat quality often results in reductions and/or displacement of wildlife.

Many shrub and tree species, such as Wyoming Big Sagebrush, which is the prevailing sagebrush species on the Machler CE, are important to wildlife for cover and forage values. The removal, control, or manipulation of shrub and tree species important to wildlife by any means is prohibited within terms of the Easement document, including, but not limited to: burning, plowing, chemical treatment or removal of shrub and tree species, unless such activity is mutually agreed upon in writing by the Landowner and FWP. These prohibitions do not apply to

the routine clearing or control of brush that is confined to construction and maintenance of trails, roads, fences, and structures permitted under this Easement.

As per Easement terms, the Landowner has the right to construct, remove, maintain, renovate, repair, or replace fences (including corrals and other livestock handling structures), pipelines, waterlines, dams, and ditches necessary for generally-accepted agricultural practices provided the structures do not significantly impact wildlife habitat or wildlife migration through the Land. All new fence construction must comply with MFWP's Wildlife-Friendly Fencing guidelines (See *A Landowner's Guide to Wildlife Friendly Fences*; Appendix E).

Since no farming activity occurred on the property prior to the establishment of the Fargo Coulee CE, any sod-busting or tilling of native rangeland vegetation is not permitted under this Easement.

In addition to habitat enhancement strategies set forth in Objective 1a, additional habitat enhancement opportunities through participation in Federal, State, and other habitat programs may be pursued on the Land provided those habitat programs implemented on the Land fall within the requirements set forth by the Easement.

The Landowner will control noxious weeds, by chemical, mechanical, or biological methods, in the amounts and frequency of application constituting the minimum necessary to accomplish reasonable control in a manner that will minimize damage to native plants.

The Department will be responsible for establishing a Baseline Inventory Report that will document wildlife habitat, plant communities, roads, fences, buildings, and other infrastructure that will serve as a baseline for future monitoring. Additional vegetation photo points and/or other monitoring plots will be established and maintained by MFWP in appropriate areas to examine vegetation condition and long- and short-term changes as a measure of management effectiveness.

Objective 1b: *Maintain and/or enhance existing native plant communities. This shall be accomplished via implementation of a grazing management plan (Appendix B) involving a rest-rotation grazing system that meets or exceeds the MFWP minimum grazing standards (Appendix A).*

Strategy 1b: To perpetually define and ensure sound grazing practices across time and Landowners, this Conservation Easement requires a rest-rotation grazing system on ~2,695 Fargo Coulee CE deeded acres, divided into four pastures. A detailed grazing management plan for the Fargo Coulee CE, including pasture maps and tables, is located in Appendix B.

For the summer grazing system each year, one pasture will be available for grazing May 1 to July 15 (growing season), and one pasture will be available to graze July 15 to September 15 (after seed-ripe). The remaining summer pasture will be rested from livestock grazing that entire year. When livestock leave the summer grazing system, they will go to the fall pasture after pre-conditioning and selling of the calves, and remain there from October 15 through November 30. The four-pasture summer system is designed to tailor both the Ranch needs and to abide by MFWP's Minimum Standards for Grazing (Appendix A).

The Department will monitor grazing plan adherence to assess effectiveness, functionality, and Landowner compliance. Livestock use and distribution will also be assessed annually. The Department, in conjunction with the Landowner, may recommend future fence and/or water improvements/adjustments, if deemed necessary. MFWP and/or the Landowner may partner with other agency(s) such as NRCS for funding and future development of grazing system improvement projects.

Goal 2: Manage wildlife populations in balance with resources and provide guaranteed public hunting and wildlife viewing opportunities with minimal impact to CE lands and adjacent physical and human environments.

Objective 2a: *Maintain wildlife use of the property in balance with resources.*

Strategy 2: The Ranch and adjacent sagebrush grassland provide critical year-round habitat for sage grouse, sharp-tailed grouse, mule deer, and pronghorn. The area also provides seasonal habitat for waterfowl, mourning doves, and migratory raptors and passerine birds, including potentially several Species of Concern: Baird's Sparrow, Sprague's Pipit, Long-billed Curlew, and Brewer's Sparrow. Implementation of a rest-rotation grazing system, control of noxious weeds, prohibition of sodbusting and development, and the preservation of shrub species on the property will ensure the habitat values for all these species are maintained.

Wild game populations fluctuate over time and may exceed FWP management objectives, thus contributing to above-average wildlife use of Ranch property, resulting in game damage problems. Such circumstances on the Ranch will be managed through public hunting during a general season framework. Game damage assistance and prescribed hunts will be provided on an "as needed" basis to the Ranch.

Objective 2b: *Provide guaranteed public hunting access and public recreation opportunity.*

Strategy 2b: As per MFWP Conservation and Public Access Easement terms, the Landowner must allow reasonable non-motorized public access for hunting, trapping, wildlife viewing, and other forms of non-motorized recreation (hereafter, hunting and recreational access). The Landowner may not charge fees, lease, or commercially outfit hunting, trapping, or charge trespass fees on deeded land or to adjoining public lands.

Hunting will be allowed on the Fargo Coulee CE consistent with Fish and Wildlife Commission-established regulations and dates/seasons. Recreational access will be allowed in the same manner year-round. Fargo Coulee CE Hunting and Access Rules (Appendix C) as defined in this Management Plan may be altered upon mutual agreement between MFWP and the Landowner.

Camping opportunities on the Machler Easement are not specified or allocated in these hunting and recreational access provisions except at the sole discretion and permission of the Landowner. The Landowner may deny access to, or expel from the Land, any person for cause, including but not limited to: intoxication or use of illegal substances, reckless behavior that jeopardizes human life, wildlife habitat, or Landowner's property, or is in violation of law or regulation applicable to public use of the Land; or misconduct under or violation of the terms of public access

provided in this Easement, including any plan of access adopted and implemented under this Management Plan.

The Landowner may apply for enrollment in, and MFWP may make available to the Landowner certain services and compensation offered through various (present or future) access and land management programs as may exist at any time. A current example at the time of this Easement's establishment is the Block Management Program. Services and/or compensation for public use impacts through the Block Management or any other access or land management Program is contingent upon Program continuation, sufficient Program funding and a prioritized ranking and selection of the Ranch and its access and hunting opportunities when compared to other land enrollment applications.

III. Overall FWP/NRCS/Fargo Coulee Conservation Easement Compliance

Annual monitoring will be completed on all CE lands. This assessment shall be conducted by MFWP or a designated third party and will involve meeting with the Landowner and completing field reviews to assess Management Plan effectiveness and to review Landowner compliance with Easement terms. The Landowner is encouraged to thoroughly familiarize themselves with the Management Plan including the grazing system schedule, the easement terms in the Deed of Conservation Easement, and to contact MFWP with any questions or concerns in order to avoid non-compliance.

Final Management Plan Approved By:

Rick Thompson, Thompson Ranch

Date

Graham Taylor, MFWP Region 4 Wildlife Manager

Date

Gary Bertellotti, MFWP Region 4 Supervisor

Date

Ken McDonald, MFWP Wildlife Division Administrator

Date



FARGO COULEE CONSERVATION EASEMENT

APPENDIX A – MFWP's MINIMUM STANDARDS FOR GRAZING LIVESTOCK

Introduction

The following grazing standards represent the minimum required by FWP of a landowner who reserves the right to pasture and graze livestock (private and public land). These standards apply to all FWP funded projects; at times it may be necessary to provide more rest from grazing than described as minimum to meet specific wildlife or fisheries habitat objectives. The minimum is most frequently applied (without additional adjustment for wildlife and fisheries needs) on projects like conservation easements and Upland Game Bird Habitat Enhancement Projects where the property remains in private ownership and agricultural use remains the primary objective. On FWP WMAs, wildlife production and habitat conservation are the primary objective and when livestock grazing occurs it is not unusual for the amount of rest from livestock grazing to exceed that required by the minimum standard. Also, on some areas where wildlife production is the primary objective, grazing intensity may be reduced to a level significantly lower than allowable by the minimum standard. These standards are designed to address management of both upland and riparian landforms.

Why a minimum standard?

Livestock grazing is the predominant land use in Montana. As the state's primary fish and wildlife management agency, FWP is actively involved with livestock grazing as it influences fish and wildlife habitats throughout Montana. About 2.4 million cattle are maintained in Montana. Livestock grazing occurs on about 69% of the state's land surface. Potential impacts to fish, wildlife, and their habitats caused by grazing are well documented in the literature. Also well documented are potential benefits for conservation that can be derived for some wildlife species through carefully planned livestock grazing strategies. Conserving wildlife habitat while continuing livestock grazing typically requires management strategies that differ from those employed for the sole purpose of maintaining a sustainable livestock forage base that maximizes livestock production. One reason for the difference in management strategies is because vegetation is much more than a forage base for wildlife. Vegetation species composition, structure, and diversity are important aspects of cover essential to the survival and production of wildlife. Healthy riparian communities are critical not only for aquatic species but for proper channel and flood plain function. Seventy-five percent of all Montana wildlife species rely on riparian areas for all or a portion of their lives. This includes many species covered in the FWP's Comprehensive Fish and Wildlife Strategy. When livestock grazing occurs, it is not unusual for cover to be the population limiting factor for many species. Aldo Leopold referred to this concept of habitat quality as 'Quality of Landscape'. Addressing cover is especially important in the implementation of FWP's Comprehensive Fish and Wildlife Strategy. It is therefore possible

that a livestock operator may be employing a grazing strategy that maintains a sustainable forage base on most of the property, but may not be providing adequate forage, cover, or floral diversity for important fish and wildlife species.

Sustainable livestock production often employs grazing strategies emphasizing production and maintenance of grass species while placing less emphasis on the maintenance of forbs and woody plants. Many wildlife species require grazing strategies that emphasize healthy woody plants and availability of forbs and grass seed heads on at least portions of the landscape every year. The maintenance of robust woody vegetation and cover is also a very important component of healthy riparian systems. Healthy ecological systems are essential for a variety of aquatic and terrestrial riparian obligates.

The purpose of FWP's minimum grazing standards to achieve a balance between maintaining sustainable agriculture and quality fish and wildlife habitat on working ranches yet provide flexibility to conserve and protect habitat needs where they are the primary objective and agriculture is secondary. FWP has applied the standard successfully over the past 30 years on a variety of projects ranging from working cattle ranches to FWP WMAs. There are examples in Montana and other states where a grazing standard similar to FWP's is being applied by livestock operators independent of FWP.

Grazing plan

Prior to grazing livestock the Landowner and FWP must agree upon and implement a grazing plan. A grazing plan includes a map of the pastures, a grazing formula specific to those pastures, the class of livestock, and other information pertinent to the management of livestock. Format for the grazing plan is included as part of the management plan template for conservation easements. The grazing plan will be included as part of the management plan for easement projects, and will define the limits and extent to which grazing may occur. The Management Plan may be amended by mutual consent, as more particularly described in Paragraph II.E. of the Conservation Easement. For other projects the management plan will be included as an attachment to the grazing lease or contract. On conservation easements the grazing plan will be enforceable only on lands covered by the easement.

Upland Minimum Standards for Summer/Fall Systems

This standard applies to upland pastures in native plant communities (i.e., generally on soils that have never been plowed) and for all riparian pastures. The grazing plan must meet or exceed minimum levels of periodic rest from livestock grazing allowing native plants adequate opportunity to reproduce and replenish root reserves. The minimum amount of rest required for any pasture grazed in one year during the plant growing season is defined as rest throughout the following year's growing season (i.e., grazing deferred until seed-ripe), followed by one year of yearlong rest, as shown in Table 1. Each pasture receives only one grazing treatment per year, and the treatments are rotated annually as shown in Table 1. The growing season is defined as beginning with the period of rapid plant growth (generally early to mid-May) until seed-ripe for the latest maturing native grasses, such as bluebunch wheatgrass or western wheatgrass (generally early August). Because the exact dates can vary as much as a few weeks depending

on the location in Montana, specific dates for livestock movement are developed for each project. Occasionally it may be necessary for the grazing system to allow for some livestock to be in the pasture scheduled for the A treatment (Table 1) beyond the growing season.

A three-pasture grazing system is used as an example (Table 1) to show the landowner might typically rotate livestock through pastures to meet the minimum levels and required sequence of rest from livestock grazing. In practice, the landowner is not limited to any particular number of pastures; many projects include more than three pastures. In some instances, sub-pastures are employed to meet riparian or other objectives on the land. If livestock are grazed, they must be moved through the pastures in compliance with these standards and the grazing plan. Where grazing occurs during the growing season, the three-treatments outlined in Table 1 are essential and the total number of pastures and/or sub-pastures will vary between projects.

Table 1. Livestock Grazing Formula using a three-pasture approach as an example.

Grazing Seasons*	Pasture 1	Pasture 2	Pasture 3
Year One	A	B	C
Year Two	B	C	A
Year Three	C	A	B

*When all treatments have been applied to all pastures, the grazing rotation begins again at Year One.

A = livestock grazing allowed during the growing season

B = livestock grazing begins after seed-ripe time

C = rest from livestock grazing yearlong

Winter and/or Early Spring Grazing

In some situations, an early grazing treatment (prior to mid-May) may be considered. However, it must be kept in mind that grazing capacity and forage production in the year a pasture is grazed from winter to beyond mid-May, will be temporarily reduced. On projects where early spring grazing (prior to rapid plant growth) is combined with summer (active growing season) grazing the three grazing treatments described in Table 1 must be employed.

It is usually more efficient to manage winter grazing separately from spring-summer grazing. If livestock are to be grazed in a native range or riparian pasture in winter or early spring (generally December through early May), and a separate grazing formula is required, it must be coordinated with the summer-fall grazing system as follows: Minimum required rest in pastures where livestock are grazed and/or fed hay during winter is one winter of rest in every two years. Hay, grain, salt, protein, or other supplements will not be placed in riparian areas during winter or any other season. Minimum required rest in pastures where livestock are grazed in spring, prior to early May, is one spring of rest in every two years. Any pastures grazed later in spring than early-mid May require the greater amount of rest shown in Table 1. As a minimum, when grazing is limited to winter or the non-growing season period, a two-pasture alternate use approach is frequently used. The area designate for winter grazing is divided into two pastures and each year one pasture is grazed during winter months and the other rested and use is alternated from year to year.

During winter months cattle tend to concentrate in wooded areas (shrub or tree-dominated areas) for shelter. This must be kept in perspective when assessing the impacts to woody vegetation. It

is often the case that with careful placement of hay, cattle impacts to woody vegetation to protect it from damage, but should only be done once efforts to control livestock distribution by other means have proven ineffective. An acceptable level of impact will vary depending on the objectives (i.e., a level of woody vegetation impact acceptable for a working cattle ranch may be much different than for a WMA).

Scope

The goal is to include as much of the lands under easement as possible within the grazing system, but one must be realistic in recognizing the animal husbandry needs of a livestock operation. It may be necessary to set aside small areas as animal husbandry units to be used at the landowner's discretion. Such areas might include calving pastures, branding pastures, sorting pens, bull pastures, or holding corrals. As long as the majority of the lands involved are within a grazing system, meeting the minimum standards, this is acceptable.

Non-native Pasture

It is common for livestock operators to have pastures on their land that are non-native range. The landowner's goal is usually to keep these pastures productive as non-native pasture. The pastures typically are seeded with an exotic pasture grass or grass mix. On occasion forbs like dry-land alfalfa are included in the planting. The FWP minimum grazing standard does not apply to these pastures. In cases of non-native pasture a grazing strategy that is coordinated with the grazing system and meets the needs of the ranch should be worked out. In the case of crested wheatgrass pasture it may be necessary to allow grazing early (late-winter or early spring) each year to maintain palatability. In the case of other pasture grasses, such as smooth brome, a deferred approach works well; a pasture is grazed during the growing season in Year One then deferred from grazing until near seed-ripe in Year Two (about the time such grasses would normally be harvested as hay). This will maintain the productivity of the non-native species until replanting is necessary and in some cases maintain them as attractive feeding sites for large wild ungulates. It is important to keep in mind that these areas, unlike native range, are essentially cropland and whether grazed or left idle will eventually need some sort of agricultural practice to maintain their productivity.

It is usually best to leave irrigated pasture management to the landowner's discretion. If important riparian is included in the field it might be necessary to fence the riparian zone from the irrigated pasture to protect it from livestock grazing. Usually grazing strategies employed on irrigated pasture are not consistent with proper management of key native riparian plants. In such situations it may be necessary to apply the guideline series entitled: *The Need for Stream Vegetated Buffers Parts 1 through 3*, Montana Department of Environmental Quality 2008.

Livestock operators often place cows in hayfields during winter months. In such cases the field should be managed at the landowner's discretion and in some instances it might be necessary to fence out riparian from the hayfield to protect it from grazing.

Stocking Rate

Usually FWP does not require a maximum stocking rate as part of the grazing strategy on easements or Upland Game Bird Habitat Enhancement Projects. In such cases it is clearly stated in the grazing plan, that the maximum stocking rate will be ultimately determined by the operator's ability to conform to the grazing system. In other words the livestock numbers may increase as long as the plan can be followed and livestock movement dates are not compromised. Such an approach is consistent with the reality that, for most easement projects, the primary use of the land is agricultural.

Occasionally a landowner has requested that an upper limit stocking rate be established as a stipulation in the easement. As long as the number of livestock is realistic this is not a problem.

On lands owned by FWP any grazing that occurs will be at stocking levels determined by the agency and approved by the FWP Commission.

Mineral and Other Supplements

On privately owned grazing lands the landowner is given more discretion on locations for placement of mineral block than on FWP lands. However, regardless of land ownership the placing of mineral block within riparian areas will be strongly discouraged. On FWP lands the placement of mineral block will be described as part of the grazing plan. Supplements will be placed away from riparian areas, ponds, and roads. Rocky (stable soil) areas on ridge tops or in the trees are preferred sites.

On FWP lands livestock within pasture grazing systems are not to be fed hay.

Flexibility

Rarely, a severe environmental influence (i.e., fire, drought, grasshoppers) may require a onetime deviation from the prescribed grazing plan. In such cases the landowner is to notify the local FWP representative of the problem. In a timely manner the local FWP representative, Habitat Section representative, and landowner will meet to discuss the issue and work out a solution. It is important to keep in mind that short term adjustments to the grazing plan must be the exception rather than the rule. Allowing grazing to occur in a pasture scheduled for rest is always a last resort. FWP has managed grazing systems across Montana through a variety of severe environmental events. This experience has shown that when a legitimate problem exists an alternative can usually be found that avoids grazing the pastures scheduled for rest.



FARGO COULEE CONSERVATION EASEMENT

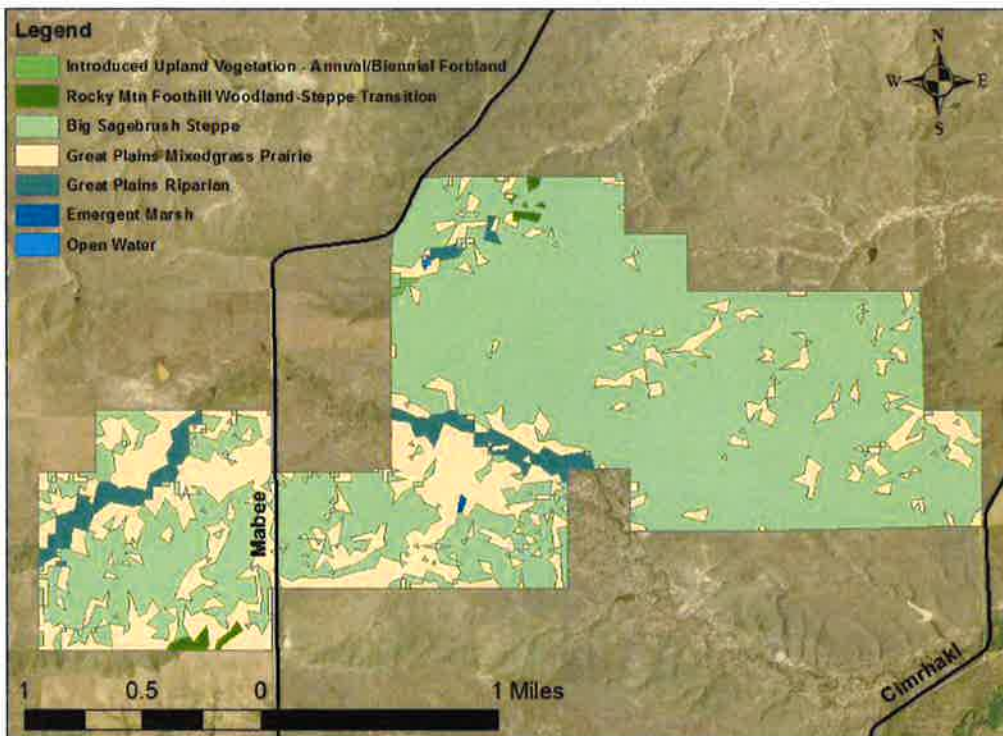
APPENDIX B – GRAZING SYSTEM

1) Land Unit Description

The grazing system on the Fargo Coulee Conservation Easement (CE) encompasses a total of 2,695 acres (all deeded; Figure 1). The summer grazing system will follow Montana Fish, Wildlife, and Parks' (MFWP's) Minimum Standards for Grazing (Appendix A). Winter grazing occurs on private lands outside of the CE.

A breakdown of the total acres under this grazing system is as follows: 2,601 acres native range, 2 acres non-native range, and 91 acres riparian. The CE, and therefore the grazing system, does not include any state or federal grazing leases. This grazing system is divided into four individual pastures, utilizing a three-treatment rest-rotation grazing system. This system is described in detail in Section 3, Grazing System.

Figure 1. Grazing land and landcover types involved in a grazing system on the Fargo Coulee CE.



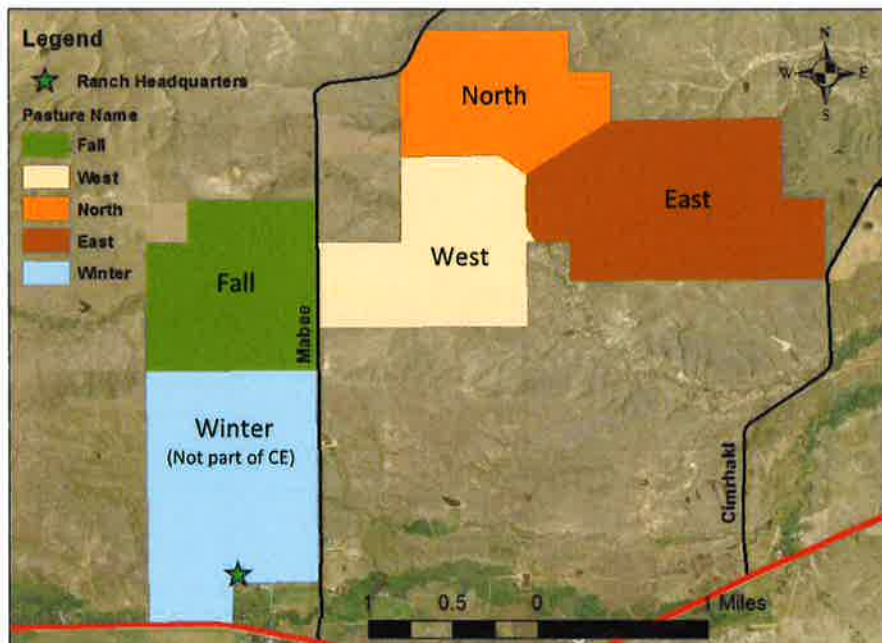
2) Current Management Narrative

This section describes what has occurred with grazing management on the Machler property (hereafter, the “Ranch”), prior to adoption of this grazing plan. Currently, the Ranch runs approximately 100-head in a cow-calf operation on the 2,695 deeded acres. Typically, livestock arrive in one of the pastures in the spring, and throughout the first part of summer, they are moved between pastures based on whether or not the neighbors’ bulls are turned out in adjacent pastures. Livestock are rotated through the remaining pastures, until pre-conditioning (weaning, vaccinating, de-worming, and feeding for weight gain) occurs in the autumn, when they are trailed home. The pasture located west of the county road (Mabee Road) typically receives autumn grazing after calves have been sold, and cows remain there until they return to the home place to overwinter. The Ranch also runs 4 to 5 bulls with the cows beginning May 21 through breeding season. Yearlings are pastured on a separate property and do not constitute a component of this grazing system.

3) Planned Management Narrative with Tables and Maps

This grazing schedule resembles the current grazing practices occurring on the Ranch, but introduces a scheduled deferment and a year of complete rest into one of the summer pastures each year. Montana Fish, Wildlife, and Parks’ Minimum Standards for Grazing (Appendix A) are applied on the three pastures located east of Mabee Road. These grazing standards are not entirely followed on the fall pasture located west of Mabee Road, however this pasture never receives growing-season grazing.

Figure 2. Pastures involved in a rest-rotation grazing system on the Fargo Coulee CE. Winter grazing lands outside the scope of this CE are also shown for reference purposes.



Livestock will be managed using a three-treatment rest-rotation grazing system during the summer, with a separate fall treatment, between the dates of May 1 through approximately November 30 (or before winter feeding begins). This grazing system thus comprises four pastures (Figure 2): a Fall pasture (located west of Mabee Road), and three summer pastures (West, North, East; located east of Mabee Road). During the summer, each year, one pasture is grazed during the growing season (A Treatment), one pasture is grazed after seed-ripe (B Treatment), and one pasture is rested yearlong (C Treatment; Table 1). These pastures remain unavailable for any type of agricultural harvest outside of scheduled grazing. The Fall pasture is grazed during the time between which cattle exit the summer grazing system and before winter feeding begins. Pasture rotations are correspondingly illustrated in grazing plan maps (Figures 3, 4, 5).

Livestock would enter the system and remain in one summer pasture during the growing season, from May 1 until July 15 (seed-ripe), and then move to the next scheduled pasture for the post-seed ripe grazing period (July 15 until September 15), when they would move to the home place (exit the system) for pre-conditioning, weaning, and selling of the calves. “Home place” refers to an area wholly outside the lands encumbered by the CE and Management Plan. Livestock would then return to the grazing system in the Fall pasture, where they would remain until the onset of winter. The fall grazing dates would typically fall between October 15 and November 30. Because the Fall pasture is comprised of native rangeland vegetation, livestock could not be fed hay as per FWP grazing standards. Should winter storms occurring prior to November 30 require the feeding of hay, this would occur at the home place. Four to five bulls will be run with the cow-calf pairs during the early treatment, until cows are bred, then they will exit the system. Cattle are the only class of livestock permitted in the grazing system.

Table 1. Fargo Coulee CE summer and fall grazing system schedule. Upon completion of year 2026, the grazing rotation schedule starts over at the top row for year 2027.

Year	West	East	North	Fall
2017	Early	Late	Rest	Fall
2018	Late	Rest	Early	Fall
2019	Rest	Early	Late	Fall
2020	Early	Late	Rest	Fall
2021	Late	Rest	Early	Fall
2022	Rest	Early	Late	Fall
2023	Early	Late	Rest	Fall
2024	Late	Rest	Early	Fall
2025	Rest	Early	Late	Fall
2026	Early	Late	Rest	Fall

Early = Livestock grazing from May 1 – July 15 (growing season).

Late = Livestock grazing from July 15 – September 15 (after seed ripe).

Fall = Livestock grazing from October 15 – November 30 (after pre-conditioning, weaning, selling; before winter feeding)

Rest = Rest from all livestock grazing entire calendar year.

Figure 3. Map of the summer grazing system for 2017, 2020, 2023, 2026, etc.

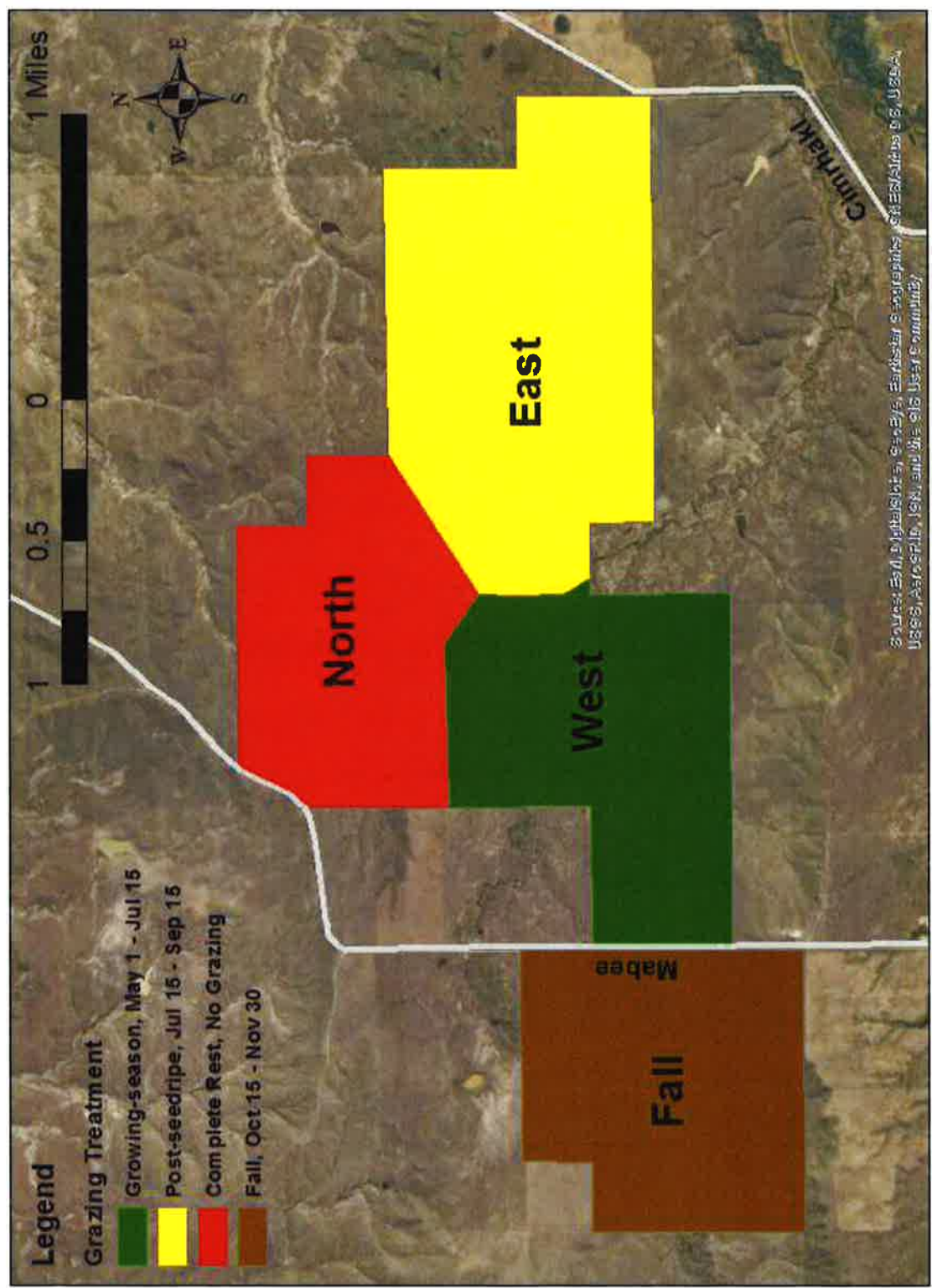


Figure 4. Map of the summer grazing system for 2018, 2021, 2024, 2027, etc.

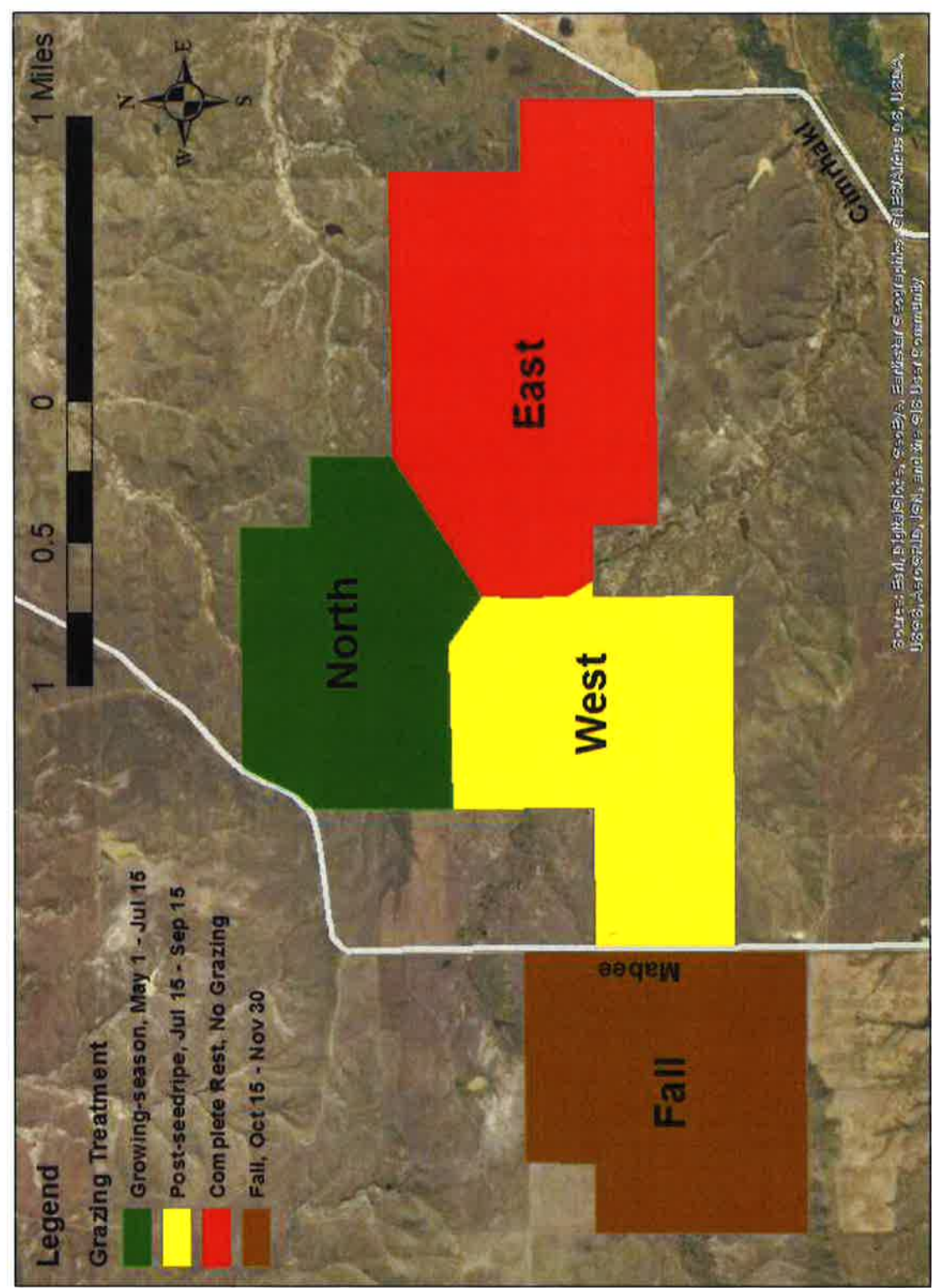
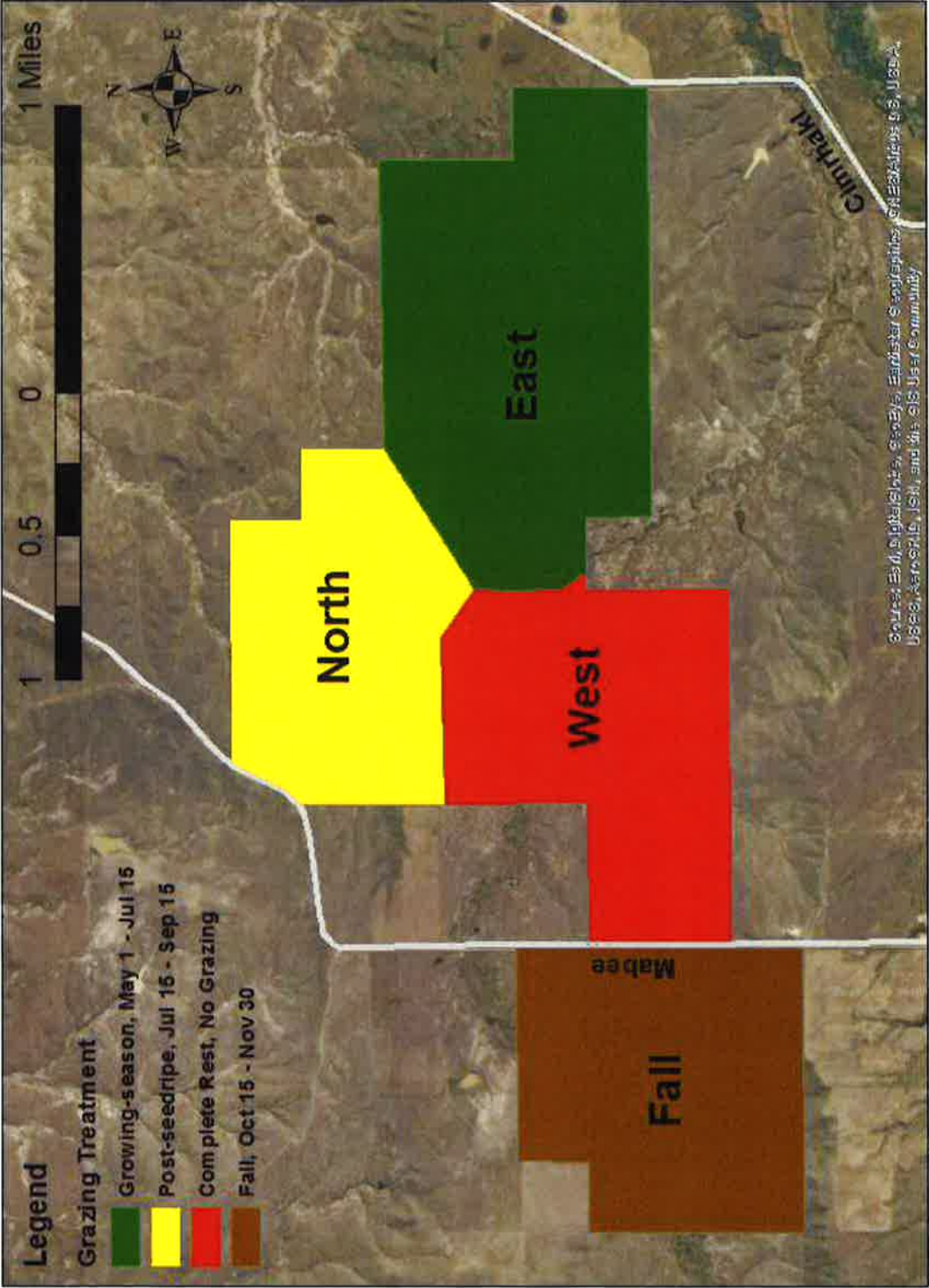


Figure 5. Map of the summer grazing system for 2019, 2022, 2025, 2028, etc.



4) Stocking Rate

This grazing plan does not directly address stocking rate. Instead, the maximum stocking rate will be based on compliance with the grazing system, i.e., the Landowner will determine stocking rate based upon ability to comply with grazing system pastures and timing sequence.

5) Salt and Mineral Management

When salt and mineral supplements are used, they will be located away from riparian and wetland zones in a manner that will minimize impacts to these areas. Sites will also be located away from any Sage-Grouse or Sharp-tailed Grouse leks should any be identified on the ranch.

6) Range Improvements

In order for the grazing system to operate, the physical improvements to the pasture layout described below are essential. Because similar habitats exist on each of the three summer pastures, fences will need to be moved in order to equalize acreage in each of the pastures, which would then equalize livestock carrying capacity. Currently, the West pasture is approximately 640 acres, the North pasture is approximately 530 acres, and the East pasture is approximately 890 acres. Once fences are moved, each pasture would approximate 680-690 acres (Figure 6).

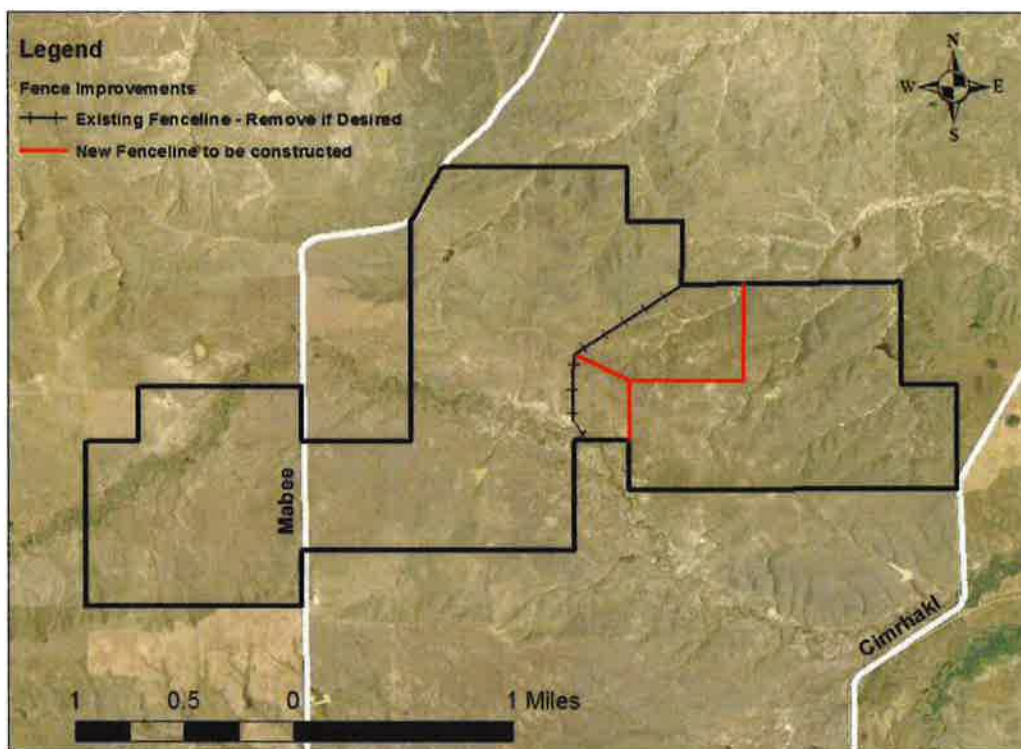
To achieve approximate equal grazing capacities, the boundary fence between the West and North pastures would be moved east to increase acreage in the West pasture by approximately 40 acres. The boundary fence between the North and East pastures would be moved southeast to increase acreage in the North Pasture by approximately 160 acres. Changes would cumulatively decrease acreage in the East pasture by approximately 200 acres. Approximately 1.5 miles of new fence construction would be required to achieve this. Up to 1 mile of old fence could be removed if desired.

Table 5. Itemized improvements needed for grazing system development on the Fargo Coulee CE.

Grazing System Range Improvements				Estimated Costs and Responsibilities				
Project Type	Component Description	Installation Date (Year)	Unit	Cost	FWP	Landowner	Other	Total Cost
Fence	West/East pasture boundary fence		0.5 mi					
Fence	North/East pasture boundary fence		1.0 mi					
Fence	West pasture fence removal		0.4 mi					
Fence	North pasture fence removal*		0.6 mi					

*Optional – this fence may be left in place with additional gates or let-down areas installed. This could provide a barrier should a buffer be desired between the Ranch's cattle in the North pasture and neighboring landowners' bulls if/when these bulls are located adjacent to the North pasture.

Figure 6. Fence improvements necessary for grazing system development on the Fargo Coulee CE.



To implement and accommodate the grazing plan, Landowner and FWP will incorporate a 50:50 cost-share agreement for new fence construction and pasture system changes identified in Table 5 through the Conservation Easement Buy-Sell Agreement. Montana Fish, Wildlife, and Parks will cost-share on fence for CE lands only, for a total of 1.5 miles of new fence construction and 1.0 miles of fence removal. Based on \$8,400 per mile of fence, per that agreement, FWP's cost share will not exceed \$10,500. Federal farm bill, NRCS, or other program funding may also be used as a substitute to reduce costs. After fencing is completed to implement the grazing system, maintenance of the Ranch, including but not limited to fence and water development repair/reconstruction, noxious weed control, and necessary road construction and repair, shall be the responsibility of the Landowner as defined in the terms of the CE.

7) How the grazing plan addresses Fish and Wildlife Objectives

The overall objective of this grazing system is to maintain and enhance the vigor of native vegetation on lands incorporated into the Fargo Coulee CE. This three-treatment, rest-rotation grazing system will improve forage quality and palatability for wildlife and cattle, and protect other important habitat components (i.e., cover) for numerous wildlife species, including Greater Sage Grouse, which are a Species of Concern inhabiting and breeding in the area. The grazing system also ensures that the primary land use remains livestock grazing, which depends on maintaining productive vegetation and soils. It will also benefit a variety of wildlife species and maintain aesthetic and recreational values for the public.

Providing season-long and year-long rest from grazing for two consecutive growing seasons via deferred (post seed-ripe) and year-long rest treatments, respectively, allows plants to replenish energy reserves and restore vigor lost through grazing during the growing season. When livestock are permitted into the “late summer” pasture following seed-ripe, hoof action tramples mature seeds into the soil, thereby facilitating seed planting. The following year’s rest treatment allows these seedlings to establish root systems and grow before growing-season livestock grazing commences again the following spring. This rest-rotation approach enables plants to maintain maximum vigor and thus recover more rapidly following grazing activity.

This summer grazing system helps establish adequate quantity and quality of forage and cover for a variety of wildlife species using upland and riparian habitats. For instance, high quality, early spring forage will be available for wild ungulates the spring following the post seed-ripe treatment. These rested pastures will become critical for antelope and deer coming out of a negative energy balance from winter, as they get ready to fawn. Standing herbaceous cover in pastures subject to deferred and rest treatments provide valuable cover for ground nesting and ground brooding birds, primarily Sage and Sharp-tailed Grouse, as well as cover for small mammals and other wildlife. Critical food items such as seeds and insects also tend to be more abundant in these rested pastures. Periodic rest in upland pastures also helps maintain shrub (sagebrush) cover, important for browse as well as hiding and thermal cover for fawns and a variety of birds and other wildlife. Increased residual vegetation across the area will improve soil fertility, quality, stability, and moisture content which in turn will improve overall vegetation and habitat quality. Because of these values, season long and yearlong rested pastures remain unavailable from any type of agricultural harvest outside of scheduled grazing (e.g., haying, seed harvest).

With this grazing system, MFWP grazing standards are followed entirely in the three summer pastures east of Mabee Road. While these grazing standards are not completely followed in the Fall pasture located west of Mabee Road, that pasture will never receive growing-season grazing, providing high quality forage for ungulates in early spring. Remaining herbaceous cover from the previous fall, coupled with sagebrush, will also provide some nesting and brood-rearing cover for upland birds without disturbance from livestock.



FARGO COULEE CONSERVATION EASEMENT

APPENDIX C – HUNTING/PUBLIC ACCESS RULES

The Fargo Coulee Conservation Easement and Access Easement (hereafter, Fargo Coulee CE) is located within Montana Fish, Wildlife, and Parks (MFWP) Deer/Elk Hunting District 417, and Antelope Hunting District 480.

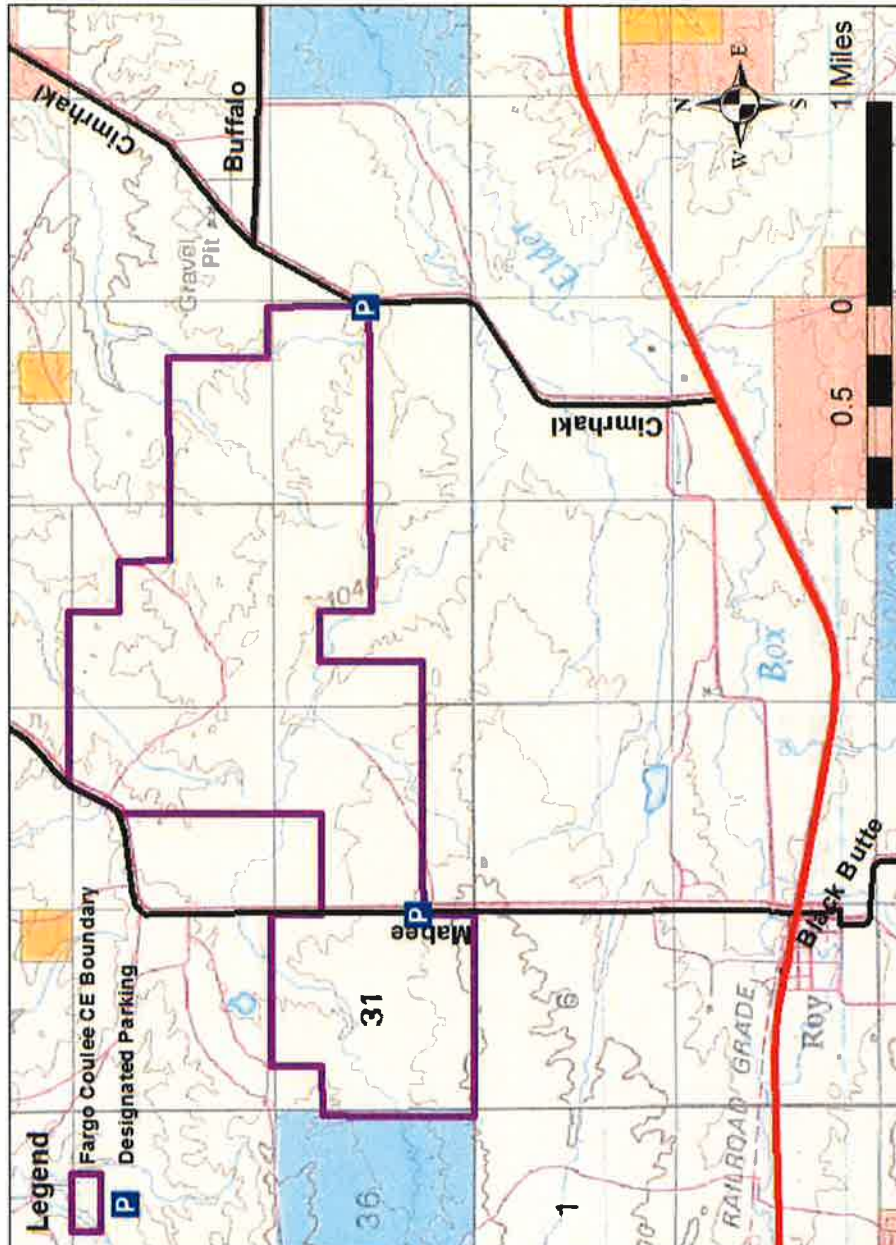
- 1) The Fargo Coulee CE is open to public hunting and trapping of all legally available game and furbearer species during Fish and Wildlife Commission established upland game bird, waterfowl, trapping, and big game hunting seasons. Wildlife viewing, shed-hunting, and other (non-motorized) recreational activities are available throughout the year.
- 2) Users wishing to gain access to the Fargo Coulee CE sign-in at one of the sign-in boxes located at a designated parking area (see map). There is no hunter or user day limit on the Fargo Coulee CE.
- 3) Hunting and other recreational activity is permitted by **non-motorized only** access from up to two designated parking areas, one on each of the public roads (Mabee Rd and Cimrhakl Rd). There are no designated roads/trails to the adjacent DNRC section; users wishing to access the DNRC must walk in from Mabee Rd.
- 4) Hunters must come prepared to retrieve harvested game (i.e., game cart, backpack, etc.). No ATVs/OHVs are permitted on the Fargo Coulee CE without Landowner permission. Users are encouraged to come with a detailed map of the area as not all boundaries may be properly marked. It is the user's responsibility to know where they are in relation to neighboring land.
- 4) No hunting permitted in the vicinity of ranch buildings or residences.
- 5) Overnight camping is permitted only on adjacent DNRC lands unless Landowner permission is granted otherwise. If camping on adjacent DNRC, users must follow DNRC's camping regulations. No open fires permitted on the Fargo Coulee CE.
- 6) The Landowner may deny access to an individual(s) for cause, ARM rule 12.4.205 (d). An example – intoxication, belligerence, or violent behavior, violation of Conservation Easement or standard BMA rules, etc.
- 7) Violation of any Fargo Coulee CE rules and/or state hunting regulations will be prosecuted. Convictions may result in the loss of Conservation Easement/Block Management access privileges in addition to other penalties. Violations can be reported to **1-800-TIP-MONT**.



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FARGO COULEE CONSERVATION EASEMENT

APPENDIX D – HUNTING/PUBLIC ACCESS MAP

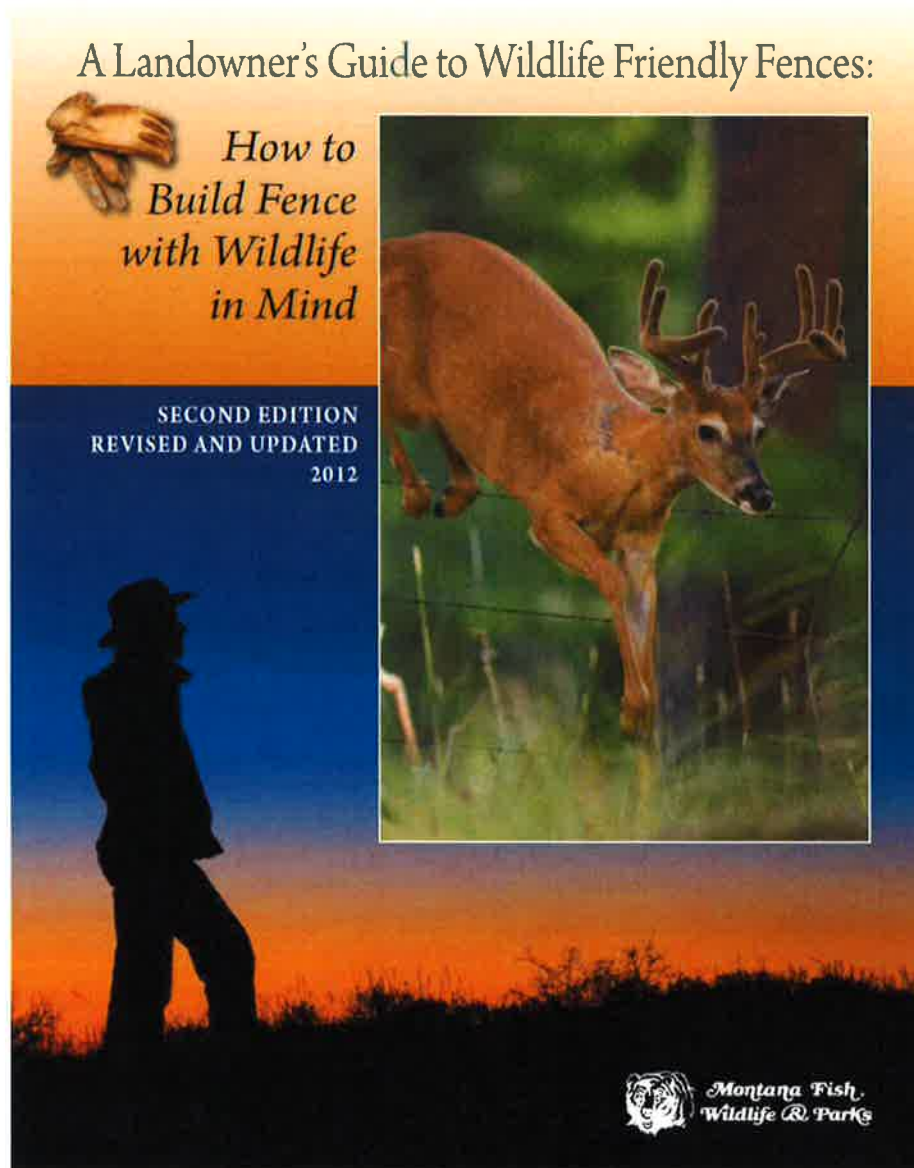




**Montana Fish,
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FARGO COULEE CONSERVATION EASEMENT

APPENDIX E – WILDLIFE-FRIENDLY FENCING GUIDELINES



Available for download at:

<http://fwp.mt.gov/fishAndWildlife/habitat/wildlife/publications/default.html>



FARGO COULEE CONSERVATION EASEMENT

APPENDIX F –GRASSLAND COMPONENT DESCRIPTION

I. Plan Purpose

This Grassland Component is an addendum to the Fargo Coulee Conservation Easement (CE) Management Plan and contains details specific to the grassland and other vegetation communities found on the Fargo Coulee CE.

II. Ecology of the Property

A. Location and Setting

The property is located approximately 1.6 miles north of Roy, Montana, 30 miles northeast of Lewistown, Montana, and 23 miles north-northeast of Grass Range, Montana, in the NRCS's "Central Sedimentary Plains (58A-C)" Major Land Resource Area (MLRA; Township 19N, and Range 22E, and Sections 27, 28, 29, 31, 32, 33, and 34). The property occurs as one continuous parcel, with historical land use being livestock grazing. Three DNRC sections lie adjacent to the west end of the property and are managed under a separate lease (not affiliated with the CE).

The Central Sedimentary Plains MLRA comprise a portion of the Northern Rolling High Plains—Northern Part, which make up 42,350 square miles across Montana and a small portion of Wyoming (NRCS 2006). Average annual precipitation fluctuates widely but mainly ranges between 11 and 14 inches; Roy receives ~14.2 inches of average annual precipitation (NRSC 2005, US Climate Data 2017). Most rainfall occurs early in the growing season (May and June), with some high-intensity thunderstorms and accompanying rain in July, August, and early autumn (NRCS 2006). Average annual temperature is 41 to 49 degrees F, and the frost-free and freeze-free periods range from 120-135 and 135-155 days, respectively (NRCS 2005, 2006).

Most of the proposed Fargo Coulee CE boundary falls within a Tier I Focus Area (Montana Glaciated Plains), which is one of the state's geographic areas of "Greatest Conservation Need" per Montana's Comprehensive Fish & Wildlife Conservation Strategy (CFWCS; MFWP 2005). The Montana Glaciated Plains are primarily level to rolling till plains dominated by sagebrush grasslands and mixed short-grass prairie and cropland. The main natural disturbances to this area include drought and fire, while livestock grazing and dryland farming are the primary land uses.

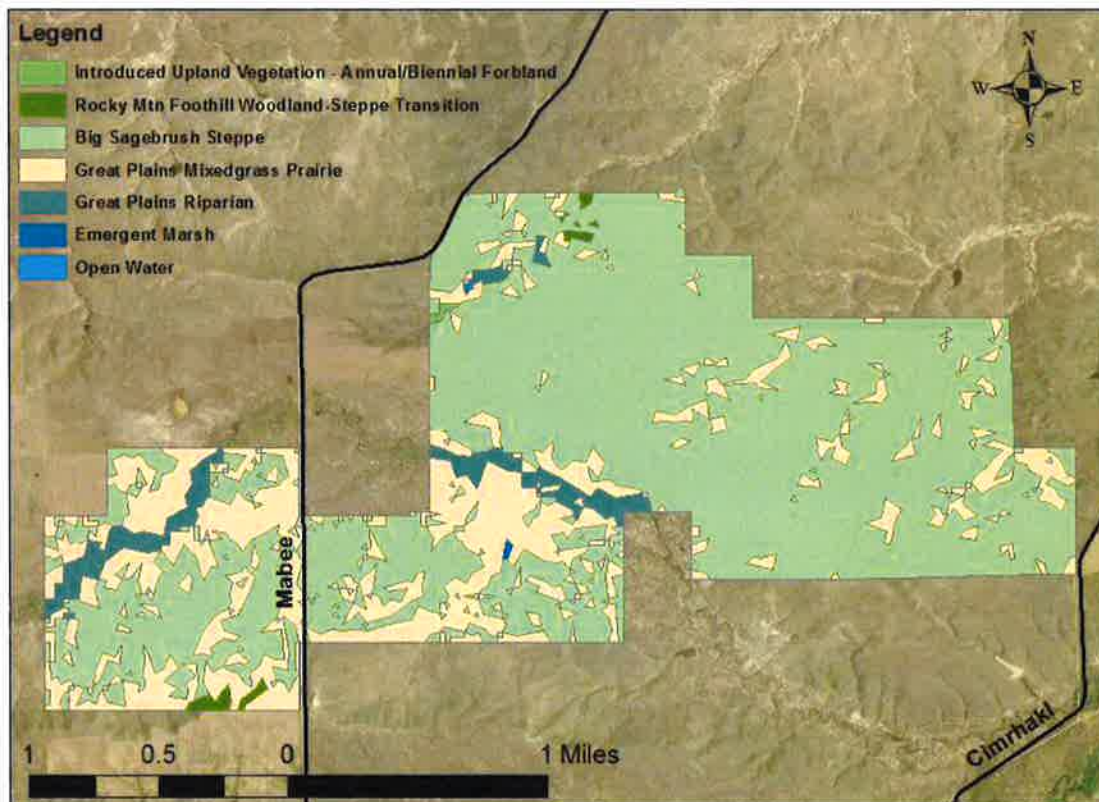
The Fargo Coulee CE is also located in the Montana Fish, Wildlife, and Parks' (MFWP) Administrative Region 4's Sage Grouse Core Area Focal Area, as identified by the 2015 State Wildlife Action Plan (SWAP; MFWP 2015), and has numerous active sage grouse leks within a 4-mile radius. The property is part of a larger landscape key to maintaining viable populations of sage grouse, as well as providing important sharp-tailed grouse, mule deer, pronghorn, and native non-game species habitat. Several Species of Concern (in addition to Greater Sage-Grouse) have potential distribution overlapping the property. These species include: Baird's Sparrow, Sprague's Pipit, Long-billed Curlew, and Brewer's Sparrow.

B. Description of Vegetation

Clayey and Dense Clay ecological sites comprise most of the Fargo Coulee CE, which lend towards sparse grassland and shrubland dominated by cool-season grasses and shrubs. Shallow Clay and Silty ecological sites comprise the remaining portion of the CE; both provide for a mixture of cool and warm-season grasses.

The predominant vegetation types on the Fargo Coulee CE include big sagebrush steppe, Great Plains mixedgrass prairie, and Great Plains riparian. Rocky Mountain woodland-steppe transition, introduced upland vegetation – annual and biennial forbland, emergent marsh, and open water are also present to a lesser extent (Figure 1).

Figure 1. Vegetation types on the Fargo Coulee CE.



The majority of sagebrush-grassland habitat in Montana is privately-owned, and the single greatest threat to this habitat is cultivation, which has increased substantially in central and eastern Montana. Therefore, it is important to conserve as much native sagebrush grassland as possible. Additionally, livestock grazing is the primary land use in the area and responsible grazing management is crucial to maintaining the integrity of the prairie grassland and sagebrush landscape here.

The dynamics of these communities are primarily a function of climate, but the magnitude of changes that can occur is influenced by grazing intensity and fire frequency. Plant productivity, distribution, and species richness are a product of environmental conditions (the temporal and spatial distribution of soil moisture and topography). In many areas of the big sagebrush steppe community, overgrazing has put these areas in a climax condition (MFWP 2015). Fire has a negative effect on this area due to the sensitivity of sagebrush to fire, and cheatgrass invasion tends to occur in areas where perennial grasses and forbs have been stressed or reduced.

Table 1 and Figure 2 provide information on the most common soil mapping units of the Fargo Coulee CE, their corresponding ecological sites, and vegetation communities.

Big sagebrush steppe

Big sagebrush steppe is a widespread ecological system occurring throughout a large portion of central Montana. In central Montana, this system experiences more precipitation annually, and more summer than winter precipitation (NRCS 2006, Vance et al. 2010a). Where it occurs on the Fargo Coulee CE is predominately on the Clayey ecological site with Thebo clay soil, however the other ecological sites also support this vegetation community. Soils supporting this ecological system across Montana are typically deep, and non-saline, often featuring a microphytic crust (Vance et al. 2010a). Thebo clay is a moderately deep, well-drained soil derived from semiconsolidated shale; it is primarily used as rangeland and poorly suited for cropland due to slope and erosion hazards (NRCS 1988).

Overall shrub cover ranges between 10 and 25%, and this system is dominated by perennial grasses and forbs with over 25% cover (MFWP 2015, NRCS 2004, Vance et al. 2010a). Wyoming big sagebrush and western wheatgrass are the dominant species, while Japanese brome and cheatgrass indicate disturbance. Shrub cover may increase with onset of heavy grazing and/or fire suppression. Perennial vegetation occurs primarily in the form of rhizomatous and bunch-form graminoids and various perennial forbs; species other than western wheatgrass present in this system, particularly after minor disturbance, may include blue grama, Sandberg's bluegrass, or bluebunch wheatgrass (NRCS 2004, Vance et al. 2010a). Common forb species include Hood's phlox, prickly pear, scarlet globemallow, purple prairie clover, dotted gayfeather, and milkvetch (NRCS 2004, Vance et al. 2010a). Fringed sagewort will also increase after disturbance (NRCS 2004).

Great Plains mixedgrass prairie

Great Plains mixedgrass prairie is a largely continuous system throughout the eastern two-thirds of Montana, occasionally interspersed with wetland/riparian zones and big sagebrush steppe. Fine- and medium-textured shallow soils lend its presence (Luna and Vance 2010). The main ecological site associated with this system on the Fargo Coulee CE is the Dense Clay ecological site, but Clayey and Shallow Clay also support this system. The major soil types are Gerdrum clay loam, Weingart-Gerdrum clay loam, and Vanda clays. These are deep, well-drained soils formed in alluvium (NRCS 1988). All are high in salt and alkali content, and Weingart-Gerdrum and Vanda clays are not suitable for non-irrigated crops or to hay and pasture (NRCS 1988). Vanda clays have a crusty surface, which also contributes to their lack of suitability for cultivation. Gerdrum clay loam is suitable for non-irrigated, drought-resistant crops (NRCS 1988).

Grasses provide the greatest canopy cover, mainly western wheatgrass (Luna and Vance 2010). Other common species include thickspike wheatgrass, green needlegrass, blue grama, and needle and thread (Luna and Vance 2010). Shrub species common to this system and the Fargo Coulee CE include Wyoming big sagebrush and in some areas, western snowberry and fringed sagewort (Luna and Vance 2010). Common forbs include yarrow and scarlet globemallow (NRCS 2004, Luna and Vance 2010).

Overgrazing results in a loss of western wheatgrass and needle and thread from this system, and an increase in shrubs, blue grama, Sandberg's bluegrass, prairie junegrass, and fringed sagewort (NRCS 2004, Luna and Vance 2010). When disturbed by overgrazing or previous cultivation, these systems also support large numbers of non-native or invasive plant species, which can be controlled only through managed grazing, chemical application, or biological methods (Luna and Vance 2010). Woody plant or cactus invasion may also occur with fire suppression (Luna and Vance 2010). Periodic prescribed fire is the most common application to restore this system across its range, however in areas where it coincides with big sagebrush communities, this practice is not recommended due to the preponderance of Greater sage-grouse and other sagebrush-obligate species. Prescribed grazing is therefore the best tool in managing and restoring this system across the area of the Fargo Coulee CE.

Great Plains riparian

This system makes up the riparian zone of Blood Creek, a tributary of the Musselshell River, on the Fargo Coulee CE. Where it occurs on the Fargo Coulee CE, Blood Creek is intermittent and ephemeral. Groundwater discharge, overland flow, and subsurface interflow provide the primary inputs to these systems overall (Vance et al. 2010b). While riparian forests may occur in other areas, communities here are primarily a wetter version of what is already present on the Fargo Coulee CE: big sagebrush and western wheatgrass. American licorice is an additional forb species that can be found on these sites. Additional shrub species present other than sage include western snowberry and woods rose (Vance et al. 2010b). Given their propensity for flooding and seedspread, these areas are sensitive to invasion by exotic grasses and forbs.

Given that the dynamics of these systems are largely driven by fluvial processes, the integrity of these systems relies on the quality and processes operating on the surrounding landscape (Vance et al. 2010b). Altering natural hydrological processes results in vegetation shifts from wetland- and riparian-dependent species to more mesic and xeric species typical of the adjacent uplands (Vance et al. 2010b). While there are no farming practices occurring on the Fargo Coulee CE, proper grazing management is key to maintaining the vigor of these areas.

Rocky Mountain Foothill Woodland-Steppe Transition

This ecological system comprises only about 12 total acres of the Fargo Coulee CE, forming a graminoid-dominated landscape. Despite fire suppression, woodland or forest structures are unattainable in this system across its range due to dry conditions and droughty soils, although scattered trees are possible (Vance and Luna 2010). The dominant soil type producing this vegetation community on the Fargo Coulee CE is the Absher-Nobe complex, another deep, moderately well-drained, alluvium soil (NRCS 1988). In addition to the shrub species in common with the Big sagebrush steppe system, deciduous shrubs like common snowberry occur. Additional graminoids that may be present include needle and thread and needlegrass (NRCS 2004, Vance and Luna 2010). Forbs present in this system may include yarrow, wild onion, pussytoes, hairy golden aster, fleabane, buckwheat, and Hood's phlox (NRCS 2004, Vance and Luna 2010).

Introduced Upland Vegetation – Annual and Biennial Forbland

This ecological system represents a highly-disturbed area significantly altered by introduced annual and biennial forbs, such as Canada thistle and yellow sweetclover. On the Fargo Coulee CE, this system comprises approximately 11 acres; proper grazing management should prevent the further spread of these species.

Emergent Marsh and Open Water

Two relatively small patches compose these ecological systems on the Fargo Coulee CE, collectively making up less than 2 acres. The emergent marsh on Fargo Coulee occurs in a depression surrounded by the Great Plains mixedgrass prairie community with a clay loam soil. Given its location in central Montana, its alkaline water chemistry likely provides home to some sedges (Luna et al. 2010). Moderate to heavy grazing will potentially decrease cover of sedges and increase the presence of exotic species such as reed canarygrass, common reed and Canadian thistle (Luna et al. 2010).

[illegible]

Map Unit Symbol	Map Unit Name	Acres in Fargo Coulee CE	Ecological Site	Major Plant Community Type(s)
234	Thebo clay, 8-25% slopes	1254.0	Clayey (Cy) RRU 58A-C 11-14" p.z. (R058AC041MT)	Big sagebrush steppe, Great Plains mixedgrass prairie, Introduced upland vegetation – Annual/biennial forbland
233	Thebo clay, 2-8% slopes	487.9		Big sagebrush steppe, Great Plains mixedgrass prairie
249	Typic Haplaquepts and Typic Haplaquolls, saline	62.1		Rocky Mountain Foothill Woodland-Steppe transition
182	Pendroy clay, 0-4% slopes	35.1		Big sagebrush steppe, Great Plains mixedgrass prairie

Table 1 (cont'd). Soil Mapping Units and Corresponding Ecological Sites and Vegetation of the Fargo Coulee Conservation Easement, Roy, MT. Map unit symbols coincide with soil types illustrated in Figure 2, below.

Map Unit Symbol	Map Unit Name	Acres in Fargo Coulee CE	Ecological Site	Major Plant Community Type(s)
111	Gerdrum clay loam, 0-4% slopes	527.8	Dense Clay (DC) RRU 58A-C 11-14" p.z.(R058AC053MT)	Big sagebrush steppe, Great Plains mixedgrass prairie, Emergent marsh
9	Absher-Nobe complex, 0-4% slopes	125.4		Rocky Mountain Foothill Woodland-Steppe transition, Great Plains mixedgrass prairie
259	Weingart-Gerdrum clay loams, 4-15% slopes	45.0		Great Plains mixedgrass prairie
252	Vanda clay, 0-8% slopes	21.8		Great Plains mixedgrass prairie
253	Vanda-Nobe clays, 0-4% slopes	8.3		Big sagebrush steppe, Great Plains mixedgrass prairie
12	Adger-Nobe clays, 0-2% slopes	<1		Big sagebrush steppe
175	Neldore-Thebo clays, 25-60% slopes	126.8	Shallow Clay (SwC) RRU 58A-C 11-14" p.z. (R058AC059MT)	Big sagebrush steppe, Great Plains mixedgrass prairie
51	Greed-Gerdrum complex, 0-2% slopes	11.4	Silty (Si) RRU 58A-C 11-14" p.z. (R058AC040MT)	Big sagebrush steppe

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FARGO COULEE DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Easement") is granted this _____ day of _____, 2017, by Kathie J. Anderson, as to an undivided 1/3 interest, Toby J. Machler, as to an undivided 1/3 interest, D. Mark Machler as to an undivided 50% of an undivided 1/3 interest, Joel Machler, as to an undivided 25% of an undivided 1/3 interest in Tract I and an undivided 1/2 interest in Kathie J. Anderson and Toby J. Machler, D. Mark Machler as to an undivided 50% interest of an undivided 1/2 interest, Joel Machler as to an undivided 25% of an undivided 1/2 interest, Susan Machler as to an undivided 25% of an undivided 1/2 interest in Tract II, (Landowners) to the Montana Department of Fish, Wildlife and Parks, an agency of the State of Montana, whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701 ("Department") and with a right of enforcement to the United States of America (the United States), acting by and through the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC).

The following Exhibits are attached hereto and incorporated into this Deed of Conservation Easement by this reference.

Exhibit A - Legal Description of the Land

Exhibit B - Maps Identifying the Conservation Easement Boundary

Exhibit C - Standards for Grazing Livestock

Exhibit D - Map Identifying Designated Routes and Parking Areas

Exhibit E – NRCS Agricultural Land Easement "Minimum Terms For Agricultural Land Easements"

I. RECITALS

- A. The people of the State of Montana recognize that certain native plant communities and important fish and wildlife habitat are worthy of perpetual conservation, and have authorized the Department to acquire perpetual conservation easements, as described in § 76-6-101 *et seq.*, Montana Code Annotated ("MCA"), from willing landowners by voluntary, cooperative means to conserve native plant communities, habitat and other natural resource of value.

- B.** The Landowners are the owners of certain real property in Fergus County, Montana (the “Land”), legally described in Exhibit A, attached hereto and incorporated herein by this reference. The Conservation Easement Boundary is depicted in Exhibit B.
- C.** The Land possesses significant agricultural values and communities of native plants and wildlife habitat, natural and scenic open-space lands, and public recreational opportunities, all of which are collectively termed “Conservation Values” and are valuable to the people of Montana and worthy of perpetual conservation.
- D.** The Conservation Values of the Land can be protected in perpetuity by the Landowners and the Department through the grant of a conservation easement to the Department with the Landowners retaining fee title to the Land and overall management of the Land consistent with the terms and conditions of this Easement.
- E.** Landowners and Department agree that the Conservation Values of the Land should be preserved and maintained by the continuation of land use patterns that do not significantly impair or interfere with the protection and preservation of these Conservation Values, in perpetuity.
- F.** The Land provides important opportunities for public recreational hunting and fishing, and trapping and the Landowners and the Department specifically intend that this Easement afford public hunting access for recreational purposes and for wildlife management purposes.
- G.** The Agricultural Conservation Easement Program, 16 U.S.C Section 3865 *et seq.*, facilitated and provided funding for the purchase of an Agricultural Land Easement (ALE) on real property described in Exhibit A, hereafter referred to as “the Protected Property” for the purposes of protecting grazing uses and related conservation values by restoring and conserving the Protected Property.
- H.** The Landowners intend by executing this Easement, freely, without restriction, and voluntarily, to grant to the Department this Easement, and its associated rights, to preserve and protect the Conservation Values in perpetuity.

II. AGREEMENT

In consideration of the sums paid by the Department, and in further consideration of the recitals, mutual covenants, and terms contained in this Easement and pursuant to the laws of the State of Montana and in particular to the Open-Space and Voluntary Conservation Easement Act, §§ 76-6-101, *et seq.*, MCA; the Department’s wildlife habitat acquisition authority, §§ 87-1-209, *et seq.*, MCA; and Title 70, Chapter 17, MCA, the Landowners voluntarily grant and convey to the Department, and the Department accepts, a conservation easement in perpetuity, with warranties of title, consisting of the following rights and restrictions over and across the Land described in Exhibit A and shown in Exhibit B.

A. PURPOSES

1. The purpose of this Easement is to preserve, protect, and restore upon mutual agreement with the Landowners, in perpetuity the Conservation Values of the Land, including but not limited to the habitat the Land provides for a variety of fish and wildlife species, and to prevent any use that will interfere with the Conservation Values of the Land. The Landowners and the Department intend this Easement to limit the uses of the Land to those activities that are consistent with the purposes of the Easement.
2. An additional specific purpose of this Easement is to provide to the Department pursuant to its authority to acquire interests in land at § 87-1-209, MCA, on behalf of the public, the right of reasonable access to the Land for recreational uses, in accordance with the terms and conditions set forth in Section II.B.5 below.
3. If one or more of the purposes of this Easement may no longer be accomplished, such failure of purpose shall not be deemed sufficient cause to terminate the entire Easement as long as any other purpose of the Easement may be accomplished. The Department and Landowners recognize that changes in economic conditions, in agricultural technologies, in accepted farm, ranch and forest management practices, and in the situation of the Landowners may result in an evolution of agricultural, silvicultural, and other uses of the Land, and such uses are permitted provided they are and remain consistent with the Purposes of this Easement.
4. Pursuant to the terms of § 76-6-107, MCA, the Land preserved by this Easement as natural land, may not, except as specifically provided herein and pursuant to statute, be converted or diverted to any uses other than those provided for by this Easement.

B. RIGHTS CONVEYED TO THE DEPARTMENT

The rights conveyed to the Department in perpetuity by this Easement are the following:

1. **Identification and Protection.** To identify, preserve, protect, and enhance by mutual agreement, in perpetuity, the Conservation Values; subject, however, to the rights reserved by the Landowners in this Easement in Section C below, and further subject to all third-party rights of record in and to the Land that are not subordinated to the terms and conditions of this Easement.
2. **Access.** Upon **Prior Notice** to the Landowners, to enter upon and to inspect the Land; to observe, study, and make scientific observations of the Land's wildlife, wildlife habitat and ecosystems; and to establish and maintain vegetation monitoring transects and enclosures, all to assure that the Department's rights in the Land are maintained and all in a manner that will not unreasonably interfere with the use of the Land by the Landowners. The Department shall also have the right to enter the Land to enforce the rights granted to the Department in this Easement, and Landowners expressly convey to the Department a right of immediate entry onto the Land if, in the Department's sole judgment, such entry is necessary to prevent damage to or destruction of the Conservation Values protected by this Easement. Aside from the rights of access granted

in this paragraph and in Paragraph II.B.5., this Easement does not grant the Department, nor the public, any rights to enter upon the Land.

3. **Injunction and Restoration.** To enjoin any activity on the Land or use of the Land which is inconsistent with the purposes and terms of this Easement, or which may have a significant adverse impact on the Conservation Values, and to enforce the reasonable restoration of any Conservation Values that may be damaged by such activities.
4. **Markers.** To place and replace, during inspections authorized above, small markers to identify boundaries, corners, and other reference points on the Land. Landowners shall not remove such markers without **Prior Approval** to the Department and without the Department's consent, which will not be unreasonably denied, as provided in Section II.G below.
5. **Public Recreational Access.** The right, on behalf of the general public, of access for the purpose of recreational hunting, trapping, and wildlife viewing on the Land and across the Land to adjacent public land in accordance with the following terms and conditions:
 - a. The public may hunt game animals and game birds of all sex and age classes in accordance with hunting regulations adopted by the State of Montana.
 - b. When requested by members of the public during all hunting seasons set by the state of Montana, Landowners must permit a minimum of 450 hunters on the Land per year ("hunter days") on a first-come, first-served basis.
 1. A "hunter day" is defined as one hunter hunting on the Land for one day, or any part of one day, measured from Midnight to Midnight.
 2. The Landowners, Landowners' immediate family, Landowners' shareholders, partners, employees, and immediate family of shareholders, partners, and employees of the Landowners are not defined as members of the general public by this Easement for the purpose of calculating "hunter days". The term "immediate family" is defined to include spouses, children, in-laws, and parents.
 3. Public access for hunting must be managed on a non-preferential and nondiscriminatory basis.
 4. The Landowners have the right to manage the distribution of hunters on the Land to address reasonable concerns for the safety of persons and property, including livestock.
 - c. The hunting seasons during which the public is allowed access to the Land for hunting under this paragraph must be set and may be changed from time to time by the State of Montana in accordance with applicable laws, regulations, and policies.
 - d. The grant of hunting rights by the Landowner to the Department contained in this Paragraph II.B.5. shall be deemed exclusive to the Department for the benefit of the public and are specifically conveyed pursuant to: (i) § 70-17-102(1), MCA , and thereby this grant creates a servitude running with the Land, and (ii) the Montana Open Space

Land and Voluntary Conservation Easement Act, § 76-6-101 *et seq.*, MCA , and thereby creates a conservation easement for the purpose of protecting significant open-space land protected and preserved for recreational purposes under § 76-6-104(3)(a), MCA.

e. Those members of the public who have hunting access to the Land pursuant to Paragraph II B.5 shall also have motor vehicle access over and across the Designated Routes and shall park in those designated areas referred to as Parking Areas identified for that purpose in Exhibit D attached to this Easement and incorporated herein by this reference. The public may not drive off these roads, routes, and trails for any purpose, except with the express permission of the Landowners or the Landowners' agent. The public may travel on foot from the designated roads, parking areas, routes, and trails, or from other publicly accessible areas to hunt, trap, and/or view wildlife throughout the Land for the purposes and in the manner prescribed in this Paragraph II.B.5. of this Easement. Furthermore, the public may travel by foot from the parking areas to access adjacent publicly accessible lands which allow public recreational use. Upon agreement with the Landowners, the Department may open additional designated roads and parking areas, as allowed for in the management plan.

f. Furthermore, the Department reserves the right to temporarily restrict the public's access to the Land as deemed necessary or appropriate to protect the Land, wildlife or wildlife habitat, or the public.

g. Notwithstanding any provision that may be construed to the contrary, Landowner may deny access to anyone who is not conducting, or has not in the past conducted, herself or himself in a prudent, responsible, and safe manner and denial of access for this reason shall not be deemed preferential or discriminatory.

h. Public access for trapping and wildlife viewing will be directed by the Management Plan. Those members of the public participating in these activities will not count toward the minimum hunter numbers outlined in Paragraph II B.5. above.

i. Except as specifically set forth in this Paragraph II.B.5., this Easement does not grant public access to any portion of the Land for any reason. This Easement does not grant any public right of overnight camping.

j. The Landowners may participate in programs offered by the Department or other entities intended to reimburse or compensate the Landowners for the impacts of hunter use of the Land. However, the Landowners and the Department acknowledge that any such hunter-impact program is administered separately from this Easement; that such program may or may not persist through time; that such program may or may not be offered for the Landowners' participation; and that nothing in this Easement provides any assurance that the Landowners will be offered the opportunity for or be accepted into any such program.

C. LANDOWNERS' RIGHTS

The Landowners reserve to themselves, and to their heirs, successors and assigns, all rights accruing from ownership of the Land, including the right to enter and manage the Land and engage in or permit others to engage in all uses of the Land that (a) are not expressly conveyed to the Department; (b) are not prohibited or restricted by this Conservation Easement; (c) are consistent with the purposes of this Conservation Easement; and (d) do not harm the Conservation Values of the Land. Some of these reserved rights identified in this Section II.C are subject to specified conditions or to the requirement of, and procedures for, obtaining the Department's **Prior Approval**, as described in Paragraph II.G. of this Easement. Without limiting the generality of the previous statements and subject to the restrictions on Landowners' activities in this Conservation Easement set forth in Paragraph II.D. hereof, the Landowners expressly reserve the following rights;

1. **Livestock Grazing.** The right to raise, pasture and graze livestock, and the right to lease pasture to another agricultural operator to raise, pasture, and graze livestock; provided that any livestock grazing is consistent with a rest-rotation grazing system as approved in writing by the Department as part of the Management Plan described in Paragraph II.E. of this Easement; is in accordance with the "Standards for Grazing Livestock," more particularly described in Exhibit C attached hereto and incorporated herein by this reference; and is consistent with other specific terms in this Easement governing livestock grazing. The Management Plan provides the details of livestock grazing on the Land, including schematic diagrams of the pasture systems to be used through the years. Any changes in the Management Plan must be adopted in a manner consistent with Paragraph II.E. in this Easement, and any grazing system so adopted or revised must continue to conform to a rest-rotation system as described in Exhibit C. For the purposes of this Easement, livestock is defined as cattle; provided, however, that other species of grazing animal may substitute for cattle with **Prior Approval**.
2. **Leasing the Land.** The Land may be leased to another agricultural operator for agricultural purposes, provided that: (a) a written lease must be entered into by the Landowners and the lessee(s); (b) the lease must require the lessee to follow the terms of the Easement, as well as any applicable provisions of the Management Plan; and (c) a copy of the executed lease must be provided to the Department. The Landowners retain responsibility under this Easement for ensuring compliance with the terms of the Easement and Management Plan by lessee(s). Lease of the Land, or of a portion of the Land, are subject to **Prior Notice**, so the Department can evaluate and provide input for the Landowners and lessee(s) to assist in compliance with the Conservation Easement, Management Plan and grazing system.
3. **Habitat Restoration and Enhancement.** The right to conduct fish and wildlife habitat restoration and enhancement projects, in cooperation with the Department and consistent with the Management Plan. Any habitat restoration or enhancement project not specifically provided for in the Management Plan requires **Prior Approval**.

4. **Water Resources and Facilities.** The right to use, develop, and maintain water resources, including stock water ponds, ditches, irrigation structures and equipment, canals, pumps and pump sites, pipelines and water wells, necessary for grazing, wildlife, habitat restoration and improvement, and all agricultural purposes that are allowed by this Easement; provided, however, any new water development or change in water use or water distribution that would have a significant adverse impact on a perennial or ephemeral river or stream, streamflow, wetlands, or riparian vegetation is prohibited. Maintenance of canals, ditches, culverts and drains – including the periodic removal of vegetation as necessary to keep water management facilities in operational condition – is not a violation of this Easement. Additionally, it is understood that maintenance of reservoirs, ditches and other water-resource facilities may involve removal and deposit of accumulated soil and organic matter, and the Department hereby agrees that such soil and organic matter may be removed from the water-resource facilities and deposited on the Land at or near the location of the removal activity in a manner customary to such operations and consistent with the Conservation Values.
5. **Man-made Structures.** Landowners have the following rights pertaining to man-made structures (in addition to those rights for structures and facilities for water use and irrigation development that are provided in Paragraph II.C.4.):
- a. The right to construct, remove, maintain, renovate, repair, or replace fences (including corrals and other livestock containment structures) necessary for generally accepted agricultural land management purposes. Any fence or other barrier that would significantly impact wildlife habitat or wildlife movement or migration on or through the Land is prohibited; however, this prohibition does not apply to corrals, fences, windbreaks and other structures necessary to contain livestock, or protect silage storage, or haystacks.
 - b. The right to maintain, renovate, repair, or replace utilities existing on the Land at the time of the grant of this Easement, including any telephone lines, water lines, and residential or agricultural electricity lines. The construction and installation of any new utility line providing services for uses on the Land requires **Prior Notice**, and the line must follow a route from existing utility services and/or existing roads that will minimize impact to the Conservation Values. The construction of any new utility line, including new natural gas pipe line or other energy transmission or utility line intended to serve uses outside the Land, requires **Prior Approval** by the Department.
6. **Roads.** To construct new and maintain existing roads and bridges or waterway crossings in connection with farming, ranching, or timber management as herein permitted. Any road, bridge, or waterway crossings constructed for one or more of such purposes shall be sited and maintained so as to minimize adverse impact on the Conservation Values. Any new road construction (but not including maintenance of existing roads) shall be subject to **Prior Approval** of the Department, as set forth in Section II.G of this Easement. The Department's approval shall be contingent on confirmation that (a) the road's intended purpose is permitted by this Easement, (b) its location will not result in significant soil erosion, and (c) the new road shall not materially disturb wildlife or wildlife habitat or

other protected Conservation Values. The Landowners' written request for approval shall include a construction plan describing the purpose of the road, its location on a topographic map and, to the extent deemed necessary by the Department, discussion of the following: road grade, drainage, erosion/sedimentation impacts and mitigating efforts, areas of cut and fill, and special concerns like culvert placement, bridges, fords, buffer strips between roads and streams, and fish and wildlife impacts and mitigating efforts. Seeding and reestablishment of cover vegetation, which is native or is representative of adjacent perennial plant species, and control of noxious weeds on exposed cuts, fills and banks is required on any new road construction.

7. **Noncommercial Recreational Use.** Landowners reserve to themselves and to their immediate family the right to use the Land for noncommercial recreational purposes, including hunting and fishing, in accordance with Section II.B.5. and Section II.D.9.

8. **Utilities.**

- a. *Existing Utilities.* Landowner retains the right to maintain, repair, and upgrade utilities existing on the Land at the time of the grant of this Easement, including utility structures, lines, conduits, cables, wires, or pipelines ("Utilities").

- b. *New Utilities on the Land.* Subject to **Prior Approval**, Landowner retains the right to install and construct new Utilities upon, over, under, within, or beneath the Land to existing and subsequently constructed structures and improvements that are expressly permitted on the Land by this Easement. The Department will require the Landowner to submit a Utility Plan as outlined in Paragraph II.C.8.d. ("Utility Plan") below.

- c. *New Utilities serving adjacent properties.* Subject to **Prior Approval**, the Landowner retains the right to construct new Utilities and grant any associated Utility right-of-way easement serving adjacent properties. The Department will require the Landowner to submit a Utility Plan as outlined in Paragraph II.C.8.d. below.

- d. *Utility Plan.* Landowner shall contact the Department prior to the preparation of the Utility Plan to obtain the required information to be included in such Plan that the Department deems relevant to its ability to protect the Conservation Values in perpetuity. Landowner and the Department will mutually determine the completeness of the Utility Plan and its adherence to the general and specific intentions of this Easement prior to the Department's approval of the Plan. Any new and expanded utility services and associated right-of-way easements must be memorialized in a written agreement that is recorded in the public records of Fergus County, signed by the Landowner, the Department, and the utility service provider prior to construction.

9. **Renewable Energy Generation for Use On the Land.** With the **Prior Approval** of the Department, Landowners reserve the right to construct wind, solar, hydropower and other types of renewable energy generation facilities (hereafter "renewable energy production") solely for uses on the Land, except that any incidental surplus energy may be sold commercially for use off of the Land or credited to Landowners' utility service. Design

and location of facilities and fixtures associated with renewable energy generation is subject to **Prior Approval** of the Department. Any renewable energy production for use on the Land and associated distribution facilities, including transmission lines and pipelines, permitted hereunder must be consistent with protection and preservation of the Conservation Values. In particular, proposed hydropower generation may not occur if riparian or wetland habitats are impaired.

- 10. Noxious Weed and Pest Management.** The right to use agricultural chemicals for control of noxious weeds, as defined by the state of Montana or other lawful authority with jurisdiction, and other invasive nonnative plants. Such use must be in the amount and frequency of application constituting the minimum necessary to accomplish reasonable control of noxious weeds, and in a manner, that will minimize damage to native plants. The Landowners shall have the right to use biological control agents for noxious weed control, provided that these biological agents have been approved for the specified use by appropriate governmental agencies; and further provided that livestock used for weed control shall comply with the grazing system in Exhibit C unless otherwise authorized by **Prior Approval**. The aerial application of herbicide to control noxious weeds is subject to **Prior Approval**, unless otherwise specified in the management plan.

Landowners shall also have the right to use legally authorized pesticides, but only to control pests on cultivated areas and only in the amount and frequency constituting the minimum necessary to accomplish reasonable control of the targeted pest species. Aerial application or other broadcast methods of herbicide, pesticide, or biological control agents require **Prior Approval**.

- 11. Regulation of Public Use.** The right to regulate public use of the Land at all times; subject, however, to the right of public hunting and fishing access granted to the Department in Paragraph II.B.5.
- 12. Oil, Gas, or Mineral Exploration and Extraction.** Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Landowners as of the date of the Easement or later acquired by Landowners, using any surface mining, subsurface mining, or dredging method, from the Land is prohibited.

If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this Easement is executed, and their interests have not been subordinated to the Easement, the Landowners must notify the Department as soon as practical after Landowner becomes aware of any proposed exploration or extraction activity by such third party. Landowner and the Department shall confer to review the proposed activity and to determine ways to best mitigate any potential impact on the Land and the Conservation Values of the proposed activities. Landowner and the Department shall subsequently cooperate in an effort to influence the third party to adopt recommended mitigating measures in the third party's exploration and development activities. Nothing herein shall require the Landowner to indemnify the Department for exploration or extraction activity by any third-party mineral interest owner.

13. Subdivision and Conveyance of Land Ownership.

- a. For the purposes of this Easement, the Land shall be considered to comprise one unit, as described in Exhibit A and shown in Exhibit B. The Landowners and the Department mutually intend that the entire Land shall be maintained in unified title as a single unit. Further, for the purposes of this Easement, any other parcel designation existing at or subsequent to the date of the conveyance of this Easement, including but not limited to government lots, aliquot parts, and certificates of survey, are considered to be an integral part of the Unit within which they are located, and may not be divided, subdivided, separated or conveyed separately from the entirety.
- b. The Landowners may sell, grant, donate, bequeath or otherwise convey the Land in its entirety to another party.
- c. Landowners shall provide the Department with **Prior Notice** before entering into an agreement that would commit the Landowners to convey the Land to another party. The purpose of this notice is to afford the Department with the opportunity to review the proposed conveyance document and any associated legal agreement to ensure consistency with the provisions of this Paragraph II.C.13.

D. RESTRICTIONS ON LANDOWNERS' ACTIVITIES

Any activity on or use of the Land that is inconsistent with the purposes and terms of this Easement is prohibited. Without limiting this general prohibition, the following activities and uses are expressly prohibited or restricted.

1. **Timber.** Landowner shall not transfer, encumber, sell, lease, or otherwise sever any timber right from the Land; except, however, Landowner may sell the rights to harvest timber for a specific forest management action authorized and approved under the provisions of II.D.2.
2. **Vegetation Removal.** The destruction, removal, control, or manipulation of native vegetation, sagebrush, planted nesting cover, or permanent cover is prohibited, except as part of or incidental to the agricultural activities and other land uses specifically allowed by this Easement or as specifically provided for in the Management Plan. The removal of live or standing dead trees is prohibited without **Prior Approval**; however, the Landowners do not require Prior Approval to remove trees and other woody vegetation that pose a threat to human safety, travel ways, or structures.
3. **Wetland and Riparian Areas.**
 - a. For the purpose of this conservation easement, riparian areas are defined as vegetation zones adjacent to rivers, streams, and wetlands including banks and adjacent uplands and are influenced by adjacent flowing or standing water or by a shallow water table caused by river-associated groundwater. Wild Hay Fields, Crop

Fields, active river channels, or eroded river banks devoid of effective wildlife cover, are not considered riparian areas.

b. The draining, filling, dredging, leveling, burning, ditching, or diking of any natural or manmade wetland or riparian area, streambank stabilization, or any other activity that significantly impacts any such area is prohibited. However, wetland areas may be restored, developed or enhanced, by either the Landowners or the Department, to benefit wildlife and to further the purposes of the Easement as a part of a restoration activity approved under Paragraph II.C.3.

c. The control, removal, or manipulation of any trees, willows, or other woody vegetation by any means is prohibited, except as needed for the ordinary course of maintaining fences and ditches provided for and allowed under this Easement or as may be allowed by the Department as part of an approved plan specifically directed to improve fish or wildlife habitat.

4. **Subdivision.** The legal or de facto division or subdivision of the Land is prohibited, which shall include, but shall not be limited to, any subdivision, short subdivision, platting, binding site plan, testamentary division, or other process by which the Land is divided into lots or in which legal or equitable title to different portions of the Land are held by different owners. The Landowners may not indirectly subdivide all or any part of the Land through the allocation of property rights among partners, shareholders, or members of any legal entity (including a homeowners association), the creation of a horizontal property regime, interval or time-share ownership arrangement, leasing, partitioning among tenants-in-common, judicial partition, or by any other means. The Landowners and the Department mutually intend that the entire Land shall be maintained in unified title as a single unit. Notwithstanding any other provision of this Paragraph to the contrary, however, the Landowners may lease the Land for agricultural purposes subject to the terms of this Easement and the Management Plan described in Paragraph II.E. of this Easement.

The Land may not be used as open or natural space or parkland for any subdivision or development purposes or requirements on land not covered by this Easement, nor may the Landowners transfer any development or subdivision rights separate from the Land.

5. **Water Rights.** Landowners will not transfer, encumber, sell, lease, or otherwise separate water rights from the Land. If Landowners receive notice or becomes aware of a situation under which water rights may be lost from the Land, Landowners shall notify the Department, and the parties may work cooperatively to address the situation.
6. **Agricultural Chemicals.** The use of herbicides, biological control agents, and pesticides in a manner other than as provided for in Paragraph II.C.10. is prohibited.
7. **Roads.** The construction of roads in a manner other than as provided for in Paragraph II.C.6. is prohibited.

8. **Land Cultivation.** The cultivation or farming of any portion of the Land is prohibited, except as for habitat restoration or enhancement activities authorized pursuant to the terms of this Easement.
9. **Commercial Recreation.** The sale or lease of access to the Land for hunting or fishing purposes, whether or not as a part of a commercial outfitting or guiding business, is prohibited. Operating a commercial hunting or fishing operation, or charging fees (sometimes known as trespass fees) for hunting or fishing on the Land or for access across the Land to reach public land or other private land, is prohibited.
10. **Mineral Exploration and Extraction.** Landowners may not engage in, authorize, or contract for any exploration for, or development and extraction of minerals, coal, ore, bentonite, oil and gas, other hydrocarbons, soils, rock, sand, gravel, or similar materials, except as provided for Paragraph II.C.12. Any other mineral exploration, development, or extraction is prohibited.
11. **Residential Use.** Residential use of the Land or any portion thereof is prohibited.
12. **Commercial Feedlot.** The establishment or operation of a commercial feedlot is prohibited. A commercial feedlot is defined for purposes of this Easement as a permanently constructed confined area or facility within which the Land is not grazed or cropped annually, for the purposes of engaging in the business of the reception and feeding of livestock for hire. Nothing in this Easement shall be construed to prevent Landowners from seasonally confining livestock in areas for feeding, lambing, calving, or similar activities, and nothing herein shall prevent Landowners from leasing pasture, corrals and agricultural improvements to third parties, subject to the terms of this Easement.
13. **Shooting Preserve, Wildlife Propagation and Related Activities.** The use of the Land as a game farm, game bird farm, shooting preserve, fur farm, zoo or menagerie, or in connection with the ownership, leasing, keeping, holding, capture, propagation, release, introduction, or trade in any animal that may pose a genetic or disease threat to any mammalian, avian, reptilian, aquatic or amphibian wildlife species, whether or not indigenous to Montana, is prohibited; however, Landowners have the right to have ranch dogs and household pets on the Land. This prohibition does not apply to common domestic livestock, or to the introduction, transplantation or release of fish or wildlife species on the Land by the Department, which must have the consent of the Landowners for any such introduction, transplantation or release on the Land.
14. **Commercial and Industrial Use.** Except as permitted in Section II.C., the establishment or operation of any commercial or industrial uses of or activities on the Land, including, but not limited to, guest ranching, outfitting, any small business, restaurant, night club, campground, trailer park, motel, hotel, commercial swimming pool, gas station, retail outlet, or facility for the manufacture or distribution of any product other than products to be grown or produced on the Land in connection with agricultural purposes expressly permitted under Paragraph II.C. of this Easement is prohibited.

15. Waste Disposal. The processing, dumping, storage or disposal of waste, refuse and debris on the Land is prohibited; provided, however, that the deposit of natural organic material derived from livestock and crop production on the Land, and the deposit of material from water-resource facility maintenance activities provided for in Paragraph II.C.4., are not considered waste disposal.

16. Hazardous Materials. Any petroleum products, explosives, hazardous substances, toxic substances, and any other substance which may pose a present or potential hazard to human health or the environment shall not be released or dumped on the Land at any time, and shall not be stored or used, except as lawfully stored and used in necessary quantities for agricultural purposes and except as part of the oil and gas exploration and development activities specifically provided in this Easement. The installation of underground storage tanks is prohibited.

E. MANAGEMENT PLAN

The parties to this Easement developed a Management Plan for grazing management, public access and public use management, wildlife habitat enhancement and restoration, wildlife passage improvement measures, and other matters pertaining to the management of the natural resources of the Land under this Easement. The Management Plan includes, as Appendix F, the Agricultural Land Easement Plan (ALE). The Management Plan has been signed by the Landowners and the Department, and represents a contractual agreement between the parties to abide by its specific requirements, management actions, and restrictions. However, if there is any inconsistency between the terms of the Management Plan and this Easement, the terms of this Easement control. The parties shall meet periodically as needed to review the Management Plan and, if deemed necessary, to propose amendments. Any amendment to the Plan must have the written consent of both parties.

In the event that the Land is to be conveyed or has been conveyed to a new owner ("Successor in Interest"), the Department agrees to enter into discussions with the Successor in Interest for the purpose of reviewing the existing Management Plan and determining any revisions that might be appropriate to facilitate management of the Land in a manner consistent with the terms of the Easement and protection of the Conservation Values. The Successor in Interest may sign, acknowledge, and thereby continue the Management Plan that is in effect at the time of the transfer of ownership, or the Successor in Interest may sign and acknowledge a revised Management Plan agreed upon by the Department. However, in the event that the Successor in Interest has not executed with the Department a continuation of the existing Management Plan or a revised Management Plan, then the Management Plan in effect at the time of the ownership transfer shall remain in full force and effect.

F. EASEMENT REPORT

The parties agree that an Easement Baseline Report (Baseline Report), including photographs, maps, surveys, studies, reports, and other documentation, has been completed by a Department biologist or natural resource professional familiar with the area, reviewed by the Department and Landowners, and acknowledged by them, in writing attached hereto as Exhibit F, to be an

accurate representation of the physical and biological condition of the Land and its nonresidential physical improvements as of the date of the conveyance of this Easement. The original Baseline Report shall be maintained in the files of the Department and shall be made available to Landowners for inspection and reproduction at Landowners' request. The parties intend that the Baseline Report shall be used by the Department to monitor Landowners' compliance with the terms and conditions of this Easement. In the event a controversy arises with respect to the nature of the biological and/or physical condition of the Land and its improvements, the parties may use the report, as well as all other relevant or material documents, surveys, reports, or other information to assist in the resolution of the controversy. From time to time, with the agreement by the Landowners, the Department may prepare (or have prepared) an Updated Easement Baseline Report to document any habitat restoration or other improved habitat conditions. Upon review and approval of the updated report by the Landowners and the Department, the improved conditions documented in the Updated Easement Baseline Report shall be considered the baseline conditions to be conserved and against which the impacts of future activities shall be evaluated.

G. PRIOR NOTICE AND PRIOR APPROVAL

1. Whenever **Prior Notice** is required under this Easement, Landowners must notify the Department as provided for in this section in writing not less than 30 days prior to the date the Landowners intends to undertake such activity, unless, for safety reasons, a shorter period is necessary in which case Landowners shall give Grantees as much notice as is possible under the circumstances. The purpose of requiring the Landowners to notify the Department prior to undertaking certain permitted activities is to afford the Department an opportunity to ensure that such activities are designed and carried out in a manner consistent with this Easement and its Purposes.
2. Whenever **Prior Approval** is required under this Easement, Landowners must notify the Department in writing not less than 60 days prior to the date the Landowners intends to undertake the activity. The notice must be sent by courier service, or registered or certified mail, return receipt requested, or by courier, or personal delivery, or email, and must describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Department to make an informed judgment as to its consistency with this Easement and its Purposes. The Department has 60 days from its receipt of such notice to review the proposed activity and to notify the Landowners of any objections to the proposed activity. If it is possible that the proposed activity can be modified to be consistent with the terms of the Easement, the Department shall inform the Landowners of the manner in which the proposed activity as modified may be conducted. The Department's response to Landowners' notice shall be sent by registered or certified mail, return receipt requested, or delivered by courier, or personal delivery service, or emailed. In the event the Department denies the Landowners' proposed activity, the Department must provide a written determination with analysis of why such activity would significantly impact the Conservation Values of the Land.
3. If the Department fails to respond to Landowners' notice of Prior Approval within 60 days of their receipt of the notice, the proposed activity shall be deemed to be inconsistent with the terms of this Easement and thereby denied.

4. The Landowners shall be under no liability or obligation for any failure to give Prior Notice or seek Prior Approval for any activity undertaken by Landowners necessitated by virtue of fire, flood, acts of God, or other element, or any other emergency reasonably deemed by Landowners to exist; provided, however, after such an event, if there is damage to the Conservation Values, the Landowners shall notify the Department of any such damage as soon as practicable.
5. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by registered or certified mail, return receipt requested, or delivered by courier, or personal delivery service, or email, addressed as follows:

To Landowners: _____

With a copy to: _____

To Department:

Department of Fish, Wildlife & Parks
Attention: Administrator, Wildlife Division
1420 E. Sixth Avenue
P.O. Box 200701
Helena, MT 59620-0701

With a copy to:

Department of Fish, Wildlife & Parks
Attention: Regional Supervisor

or to such other address as the parties from time to time shall designate by written notice to the others. The parties shall provide each other current contact information, including phone numbers and email addresses. All notices which are so addressed and paid for shall be deemed effective when personally delivered, or, if sent by courier or mailed, on the earlier of receipt or five business days after deposit thereof with a courier or mail service, return receipt requested.

H. REMEDIES FOR UNAUTHORIZED USES AND PRACTICES

If the Department determines that the Landowners have violated the terms of this Easement, or if the Landowners undertake any activity requiring approval of the Department without first obtaining such approval, the Department shall give written notice to the Landowners of the violation and demand corrective action sufficient to cure the violation, and, when the violation involves injury to the Land resulting from any use or activity inconsistent with the terms of this Easement, to restore the portion of the Land so damaged. If the Landowners:

1. fail to cure the violation within 30 days after receipt of notice from the Department, or

2. under circumstances where the violation cannot reasonably be cured within a 30 day period, fails to begin curing the violation within the 30 day period (or, within 30 days of Landowners' receipt of notice from the Department, if Landowners fail to agree with the Department in writing on a date by which efforts to cure such violation will reasonably begin), or
3. fail to continue diligently to cure such violation until finally corrected,

the Department may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement. The Department may seek to enjoin the violation, by temporary or permanent injunction, to require the restoration of the Land to the condition that existed prior to any such injury, and, if restoration is not possible to fully compensate for injury to the Conservation Values, to recover monetary damages for to which it may be entitled for violation of the terms of this Easement.

If the Department, in its sole discretion, determines that a violation is threatened or imminent or that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, the Department may pursue its remedies under this paragraph without prior notice to the Landowners or without waiting for the period provided for cure to expire.

The Department's rights under this provision apply equally in the event of either actual or threatened violation of the terms of this Easement. The Landowners agree that the Department's remedies at law for any violation of the terms of this Easement are inadequate. Accordingly, the Department is entitled to the injunctive relief. If injunctive relief is inadequate to restore the Conservation Values as a result of a violation and to compensate the Department and the public for the loss and damage to the Department's rights, the Department shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Value protected by this Easement including, without limitation, damages for the loss of scenic, aesthetic, or natural resource values. Without limiting Landowners' liability therefore, the Department, in its sole discretion may apply any damages recovered to the cost of undertaking any corrective action on the Land. The Department's remedies described in this section are cumulative and are in addition to all remedies available at law or in equity.

Nothing contained in this Easement may be construed to entitle the Department to bring any action against the Landowners for any injury to or change in the Land resulting from causes beyond the Landowners' control, including, without limitation, fire, flood, storm, and natural earth movement, or from any prudent action taken to prevent, abate, or mitigate significant injury to the Land resulting from such causes.

Enforcement of the terms of this Easement is at the discretion of the Department, and any forbearance by the Department to exercise its rights under this Easement in the event of any breach of any term of this Easement by the Landowners may not be deemed or construed to be a waiver by the Department of that term or of any subsequent breach of the same or any other term of this Easement. No delay or omission by the Department in the exercise of any right or remedy upon any breach by Landowners may impair the right or remedy or be construed as a waiver, nor may any forbearance or delay give rise to a claim of laches, estoppel or prescription.

Costs of restoration of the Conservation Values that are attributable to Landowners' violation or breach of the terms of this Easement shall be borne by Landowners, unless a court orders otherwise or unless the parties mutually agree to share such costs. Attorneys' fees and reasonable costs of suit that are incurred by a prevailing party in enforcing the terms of this Easement against the another party, including recovery of costs and damages if authorized under Montana law for temporary or preliminary injunctive relief that is improvidently granted, shall be borne by the nonprevailing party if so ordered by a court.

If a dispute arises between Landowners and the Department concerning interpretation of the meaning of this Easement or concerning the consistency of any proposed use or activity with the terms or purposes of this Easement, and if Landowners agrees in writing not to proceed with the use or activity pending resolution of the dispute, either Landowners or the Department may refer the dispute to mediation by request made in writing to the other party. Within 10 days of receipt of such referral, Landowners and the Department will select an impartial mediator who shall conduct the mediation and thereby assist the parties in resolving the dispute cooperatively. Each party shall pay an equal share of the mediator's fee. In referring any matter arising under this Easement to mediation, Landowners and the Department agree that mediation offers an alternative to the expense and time required to resolve disputes by litigation and is therefore often preferable to litigation. Nevertheless, mediation pursuant to this Paragraph shall be voluntary, and this mediation provision shall not be interpreted as precluding or limiting the parties from seeking legal or equitable remedies available under this Section II.G.

I. HOLD HARMLESS AND INDEMNITY

The Landowners shall hold harmless and indemnify the Department and its employees, agents, and contractors from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Land, as a result of the negligence or willful misconduct of the Landowners or their agents, employees or contractors, unless due to the negligence or willful misconduct of the Department or its agents, employees, or contractors. Nothing herein shall create any indemnity obligation by the Landowners to the Department for any hunter, angler, or recreational user of the property, unless such loss or injury is due to the negligence or willful misconduct of the Landowners or their agents, employees or contractors.

The Department similarly agrees to hold harmless and indemnify the Landowners and their employees, agents and contractors from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person or physical damage to any property, resulting from any action, omission, condition, or other matter related to or occurring on or about the Land, as a result of the Department's exercise of its rights granted under this Easement, unless due to the negligence or willful misconduct of the Landowners or their agents, employees or contractors.

J. TERMINATION, EXTINGUISHMENT, CONDEMNATION, REIMBURSEMENT

This Easement constitutes a real property interest immediately vested in the Department. It is the unequivocal intention of the parties that the conservation purposes of this Easement are carried out in perpetuity. If, however, circumstances arise in the future that render the purposes of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The parties agree that changed economic conditions may not be considered as circumstances justifying the modification, termination or extinguishment of this Easement.

If this Easement is extinguished by judicial proceedings, or should any interest in the Land be taken by the exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation with the **Prior Approval** of the Department, the Department is entitled to a proportional share of the proceeds of any sale, exchange, or involuntary conversion of the Land formerly subject to this Easement. The Landowners and the Department shall act jointly to recover the full value of the property interests in the Land subject to the taking or in lieu purchase and all direct costs or incidental damages to which each is entitled.

For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Land unencumbered by the Easement remains constant as determined as of the date of this grant. The parties agree that this ratio is 65 percent, as was determined by independent appraisal at the time of the grant of this Easement, and the parties further agree that the value of any future interest of the Department will not include any value attributable to authorized improvements to the Land made by the Landowners after the date of this grant. Therefore, in the event of any whole or partial judicial extinguishment, or eminent domain or purchase in lieu of condemnation, Landowners shall be entitled to receive from the financially liable party 35 percent of the unencumbered value of the real property and the Department shall be entitled to receive 65 percent of the unencumbered value of the real property. The Department shall use all such proceeds that it receives in a manner consistent with the conservation purposes of this Easement.

K. SUBORDINATION

If at the time of conveyance of this Easement, the Land is subject to a mortgage [or Deed of Trust or Contract for Deed] or other security interest, in favor of _____[Bank], whose address is _____ (“Lienholder”). Said Mortgage/Deed of Trust/Abstract of Contract for Deed was recorded on _____, in Book _____, page _____, under Document No. _____, Records of _____ County, Montana (the “Mortgage”). The Lienholder has agreed by separate Subordination Agreement, which will be recorded immediately after this Easement is granted, to subordinate its rights in the Land to this Easement to the extent necessary to permit the Department to enforce the purposes of the Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of the Lienholder or other holders of a security interest. The priority of the existing mortgage or other security interest with respect to any valid claim to the proceeds of the sale or insurance, or to the leases, rents, and profits of the Land is not affected by this Easement. All provisions contained in this Section II.K., shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

K. ASSIGNMENT

This Easement is transferable, but the Department may assign this Easement only to an organization that is a qualified organization at the time of transfer under § 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under the laws of the state of Montana. As a condition of any assignment, the Department shall require that the conservation purposes of this Easement are to be carried out in perpetuity.

L. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate as set forth in the Department's Amendment Policy, the Landowners and the Department are free to jointly amend this Easement; provided that no amendment may be allowed that will affect the compliance with or the qualification of this Easement under any applicable laws, including § 76-6-101, *et seq.*, MCA, or §170(h) of the Internal Revenue Code, as amended. Any amendment must be consistent with the purposes of this Easement, may not affect its perpetual duration, and either must enhance, or must have no effect on, the Conservation Values which are protected by this Easement. Furthermore, any amendment must not result in prohibited inurement or private benefit to the Landowners or any other parties. Any Easement amendment must be in writing, signed by both parties, and recorded in the public records of Valley County.

M. RECORDING

The Department shall record this instrument in a timely fashion in the official records of Fergus County, Montana, and may re-record it at any time as may be required to preserve its rights in this Easement.

N. REPRESENTATIONS AND WARRANTIES

Landowners represent and warrant that, after reasonable investigation and to the best of their knowledge:

1. Landowners have clear title to the Land; that Landowners have the right to convey this Conservation Easement; and that the Land is free and clear of any encumbrances, except those encumbrances that have been expressly approved by the Department.
2. Any handling, transportation, storage, treatment or use of any substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in anyway, harmful or threatening to human health or the environment, that has occurred on the Land prior to the date of this Easement has been in compliance with all applicable federal, state, and local laws, regulations, and requirements. No deposit, disposal, or other release of any hazardous substance has occurred on or from the Land, in violation of

applicable law.

3. No underground storage tanks are located on the Land, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Land in a manner not in compliance with the applicable federal, state, and local laws, regulations, and requirements.
4. Landowners and the Land are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Land and its use.
5. There is no pending or threatened litigation in any way affecting, involving, or relating to the Land, other than the ongoing statewide adjudication of water rights in Montana.
6. No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failing to comply with, any federal, state, or local law, regulation, or requirement applicable to the Land or its use, nor do there exist any facts or circumstances that Landowner might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

O. GENERAL PROVISIONS

1. Controlling Law. The interpretation and performance of this Easement will be governed by the laws of the State of Montana.
2. Construction. Any general rule of construction to the contrary notwithstanding, this Easement must be liberally construed in favor of the grant to effect the purposes of this Easement and the policy and purposes of § 76-6-101, *et seq.*, MCA. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid must be favored over any interpretation that would render it invalid.
3. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section II.L above.
4. No Forfeiture. Nothing contained in this Easement will result in a forfeiture or reversion of Landowners' title in any respect.
5. Successors. This Easement is binding upon, and inures to the benefit of the parties, their heirs, administrators, successors and assigns, and continues as a servitude running in perpetuity with the Land.

6. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Land, except that liability for acts or omissions occurring prior to transfer survive transfer.
7. Severability. If any provision of this Easement is found to be invalid, the remainder of the provisions of this Easement are not affected.
8. Subordination. No provision of this Easement is to be construed as impairing the ability of Landowner to use the Land as collateral for any loan, provided that any mortgage or lien arising after the date of execution of this Easement shall be subordinate to the terms of this Easement.
9. Subsequent Deeds and Instruments. The Landowner agrees that reference to this Easement will be made in any subsequent purchase and sale agreements, deeds, or other legal instruments conveying an interest in the Property (including any leasehold interest).
10. Counterparts. This Easement may be executed in counterparts which, taken together, shall constitute one and the same instrument.
11. Joint Obligation. The obligations imposed by this Easement upon Landowners shall be joint and several.

TO HAVE AND TO HOLD unto the Department, its successors, and assigns FOREVER.

IN WITNESS WHEREOF, the Landowners and the Department have set their hands on the day and year first above written.

This Agricultural Land Easement is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (ACEP). The EXHIBIT E is attached hereto and incorporated herein by reference and will run with the land in perpetuity. As required by 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468, and as a condition of receiving ACEP funds, all present and future uses of the Protected Property identified in EXHIBIT A is and will remain subject to the terms and conditions described forthwith in this Addendum entitled Minimum Deed Terms For The Protection Of Agricultural Use in EXHIBIT E that is appended to and made a part of this easement deed.

GRANTED BY: LANDOWNERS

ACCEPTED BY: MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS

Martha Williams, Director

STATE OF MONTANA)
 : ss
COUNTY OF LEWIS AND CLARK)

This instrument was acknowledged before me on _____, 2017, by Martha Williams, as Director of the Montana Department of Fish, Wildlife and Parks.

Notary Public for the State of Montana
Printed Name: _____
Residing at _____
My Commission Expires _____

ACKNOWLEDGEMENTS

STATE OF MONTANA)
COUNTY OF FERGUS) : ss.

This instrument was acknowledged before me on _____, 2017,
by _____.

Notary Public for the State of Montana
Printed Name: _____
Residing at: _____
My Commission Expires _____

EXHIBIT A

LEGAL DESCRIPTION OF THE FARGO COULEE CONSERVATION EASEMENT

Tract I:

Township 19 North, Range 22 East, P.M.M., Fergus County, Montana

Section 29: NW $\frac{1}{4}$ SE $\frac{1}{4}$

Section 32: NW $\frac{1}{4}$ NE $\frac{1}{4}$

Tract II:

Township 19 North, Range 22 East, P.M.M., Fergus County, Montana

Section 27: SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$

Section 28: S $\frac{1}{2}$, NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$

Section 29: E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, That part of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ lying East of or Southeasterly of fence along County Road; Deed Reference Book 204 page 510

Section 31: Lots 2, 3, 4, E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$

Section 32: NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ N $\frac{1}{2}$, N $\frac{1}{2}$ S $\frac{1}{2}$

Section 33: NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$

Section 34: N $\frac{1}{2}$.

-- END OF LEGAL DESCRIPTION --

EXHIBIT B

MAP IDENTIFYING THE CONSERVATION EASEMENT BOUNDARY

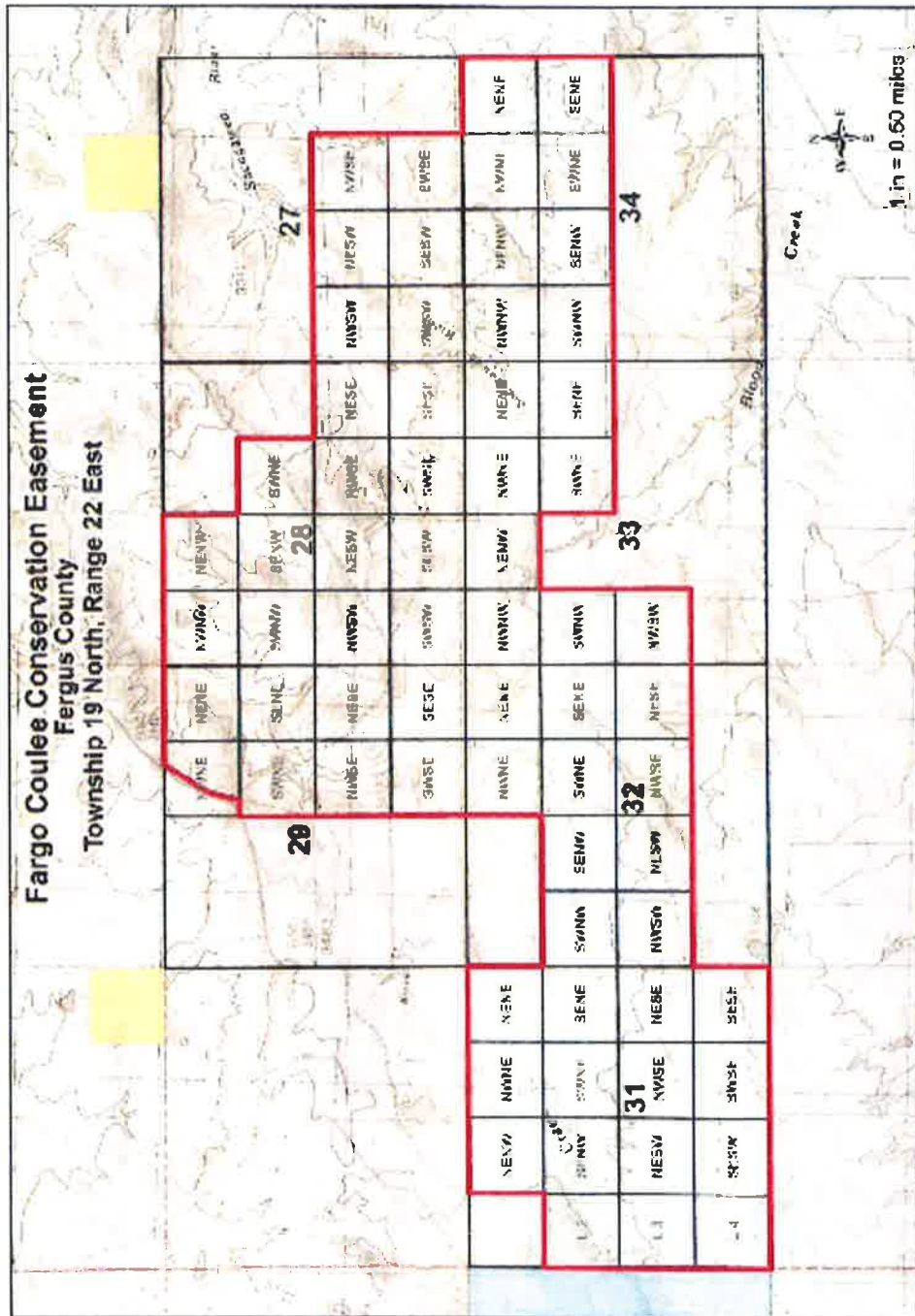


EXHIBIT C

FWP MINIMUM STANDARDS FOR GRAZING LIVESTOCK

Introduction

The following grazing standards represent the minimum required by FWP of a landowner who reserves the right to pasture and graze livestock (private and public land). These standards apply to all FWP funded projects; at times, it may be necessary to provide more rest from grazing than described as minimum to meet specific wildlife or fisheries habitat objectives. The minimum is most frequently applied (without additional adjustment for wildlife and fisheries needs) on projects like conservation easements and Upland Game Bird Habitat Enhancement Projects where the property remains in private ownership and agricultural use remains the primary objective. On FWP WMAs, wildlife production and habitat conservation are the primary objective and when livestock grazing occurs it is not unusual for the amount of rest from livestock grazing to exceed that required by the minimum standard. Also, on some areas where wildlife production is the primary objective, grazing intensity may be reduced to a level significantly lower than allowable by the minimum standard. These standards are designed to address management of both upland and riparian landforms.

Why a minimum standard?

Livestock grazing is the predominant land use in Montana. As the state's primary fish and wildlife management agency, FWP is actively involved with livestock grazing as it influences fish and wildlife habitats throughout Montana. About 2.4 million cattle are maintained in Montana. Livestock grazing occurs on about 69% of the state's land surface. Potential impacts to fish, wildlife, and their habitats caused by grazing are well documented in the literature. Also, well documented are potential benefits for conservation that can be derived for some wildlife species through carefully planned livestock grazing strategies. Conserving wildlife habitat while continuing livestock grazing typically requires management strategies that differ from those employed for the sole purpose of maintaining a sustainable livestock forage base that maximizes livestock production. One reason for the difference in management strategies is because vegetation is much more than a forage base for wildlife. Vegetation species composition, structure, and diversity are important aspects of cover essential to the survival and production of wildlife. Healthy riparian communities are critical not only for aquatic species but for proper channel and flood plain function. Seventy-five percent of all Montana wildlife species rely on riparian areas for all or a portion of their lives. This includes many species covered in the FWP's Comprehensive Fish and Wildlife Strategy. When livestock grazing occurs, it is not unusual for cover to be the population limiting factor for many species. Aldo Leopold referred to this concept of habitat quality as 'Quality of Landscape'. Addressing cover is especially important in the implementation of FWP's Comprehensive Fish and Wildlife Strategy. It is therefore possible that a livestock operator may be employing a grazing strategy that maintains a sustainable forage base on most of the property, but may not be providing adequate forage, cover, or floral diversity for important fish and wildlife species.

Sustainable livestock production often employs grazing strategies emphasizing production and maintenance of grass species while placing less emphasis on the maintenance of forbs and woody plants. Many wildlife species require grazing strategies that emphasize healthy woody plants and availability of forbs and grass seed heads on at least portions of the landscape every year. The maintenance of robust woody vegetation and cover is also a very important component of healthy riparian systems. Healthy ecological systems are essential for a variety of aquatic and terrestrial riparian obligates.

The purpose of FWP's minimum grazing standards to achieve a balance between maintaining sustainable agriculture and quality fish and wildlife habitat on working ranches yet provide flexibility to conserve and protect habitat needs where they are the primary objective and agriculture is secondary. FWP has applied the standard successfully over the past 30 years on a variety of projects ranging from working cattle ranches to FWP WMAs. There are examples in Montana and other states where a grazing standard, similar to FWP's, is being applied by livestock operators independent of FWP.

Grazing plan

Prior to grazing livestock, the Landowner and FWP must agree upon and implement a grazing plan. A grazing plan includes a map of the pastures, a grazing formula specific to those pastures, the class of livestock, and other information pertinent to the management of livestock. Format for the grazing plan is included as part of the management plan template for conservation easements. The grazing plan will be included as part of the management plan for easement projects, and will define the limits and extent to which grazing may occur. The Management Plan may be amended by mutual consent, as more particularly described in Paragraph II.E. of the Conservation Easement. For other projects the management plan will be included as an attachment to the grazing lease or contract. On conservation easements, the grazing plan will be enforceable only on lands covered by the easement.

Upland Minimum Standards for Summer/Fall Systems

This standard applies to upland pastures in native plant communities (i.e., generally on soils that have never been plowed) and for all riparian pastures. The grazing plan must meet or exceed minimum levels of periodic rest from livestock grazing allowing native plants adequate opportunity to reproduce and replenish root reserves. The minimum amount of rest required for any pasture grazed in one year during the plant growing season is defined as rest throughout the following year's growing season (i.e., grazing deferred until seed-ripe), followed by one year of yearlong rest, as shown in Table 1. Each pasture receives only one grazing treatment per year, and the treatments are rotated annually as shown in Table 1. The growing season is defined as beginning with the period of rapid plant growth (generally early to mid-May) until seed-ripe for the latest maturing native grasses, such as bluebunch wheatgrass or western wheatgrass (generally early August). Because the exact dates can vary as much as a few weeks depending on the location in Montana, specific dates for livestock movement are developed for each project. Occasionally it may be necessary for the grazing system to allow for some livestock to be in the pasture scheduled for the A treatment (Table 1) beyond the growing season.

A three-pasture grazing system is used as an example (Table 1) to show the landowner might typically rotate livestock through pastures to meet the minimum levels and required sequence of rest from livestock grazing. In practice, the landowner is not limited to any particular number of pastures; many projects include more than three pastures. In some instances, sub-pastures are employed to meet riparian or other objectives on the land. If livestock are grazed, they must be moved through the pastures in compliance with these standards and the grazing plan. Where grazing occurs during the growing season, the three-treatments outlined in Table 1 are essential and the total number of pastures and/or sub-pastures will vary between projects.

Table 1. Livestock Grazing Formula using a three-pasture approach as an example.

Grazing Seasons*	Pasture 1	Pasture 2	Pasture 3
Year One	A	B	C
Year Two	B	C	A
Year Three	C	A	B

*When all treatments have been applied to all pastures, the grazing rotation begins again at Year One.

A = livestock grazing allowed during the growing season

B = livestock grazing begins after seed-ripe time

C = rest from livestock grazing yearlong

Winter and/or Early Spring Grazing

In some situations, an early grazing treatment (prior to mid-May) may be considered. However, it must be kept in mind that grazing capacity and forage production in the year a pasture is grazed from winter to beyond mid-May, will be temporarily reduced. On projects where early spring grazing (prior to rapid plant growth) is combined with summer (active growing season) grazing the three grazing treatments described in Table 1 must be employed.

It is usually more efficient to manage winter grazing separately from spring-summer grazing. If livestock are to be grazed in a native range or riparian pasture in winter or early spring (generally December through early May), and a separate grazing formula is required, it must be coordinated with the summer-fall grazing system as follows: Minimum required rest in pastures where livestock are grazed and/or fed hay during winter is one winter of rest in every two years. Hay, grain, salt, protein, or other supplements will not be placed in riparian areas during winter or any other season. Minimum required rest in pastures where livestock are grazed in spring, prior to early May, is one spring of rest in every two years. Any pastures grazed later in spring than early-mid May require the greater amount of rest shown in Table 1. As a minimum, when grazing is limited to winter or the non-growing season period, a two-pasture alternate use approach is frequently used. The area designate for winter grazing is divided into two pastures and each year one pasture is grazed during winter months and the other rested and use is alternated from year to year.

During winter months, cattle tend to concentrate in wooded areas (shrub or tree-dominated areas) for shelter. This must be kept in perspective when assessing the impacts to woody vegetation. It is often the case that with careful placement of hay, cattle impacts to woody vegetation to protect it from damage, but should only be done once efforts to control livestock distribution by other means have proven ineffective. An acceptable level of impact

will vary depending on the objectives (i.e., a level of woody vegetation impact acceptable for a working cattle ranch may be much different than for a WMA).

Scope

The goal is to include as much of the lands under easement as possible within the grazing system, but one must be realistic in recognizing the animal husbandry needs of a livestock operation. It may be necessary to set aside small areas as animal husbandry units to be used at the landowner's discretion. Such areas might include calving pastures, branding pastures, sorting pens, bull pastures, or holding corrals. As long as the majority of the lands involved are within a grazing system, meeting the minimum standards, this is acceptable.

Non-native Pasture

It is common for livestock operators to have pastures on their land that are non-native range. The landowner's goal is usually to keep these pastures productive as non-native pasture. The pastures typically are seeded with an exotic pasture grass or grass mix. On occasion forbs like dry-land alfalfa are included in the planting. The FWP minimum grazing standard does not apply to these pastures. In cases of non-native pasture a grazing strategy that is coordinated with the grazing system and meets the needs of the ranch should be worked out. In the case of crested wheatgrass pasture it may be necessary to allow grazing early (late-winter or early spring) each year to maintain palatability. In the case of other pasture grasses, such as smooth brome, a deferred approach works well; a pasture is grazed during the growing season in Year One then deferred from grazing until near seed-ripe in Year Two (about the time such grasses would normally be harvested as hay). This will maintain the productivity of the non-native species until replanting is necessary and in some cases, maintain them as attractive feeding sites for large wild ungulates. It is important to keep in mind that these areas, unlike native range, are essentially cropland and whether grazed or left idle will eventually need some sort of agricultural practice to maintain their productivity.

It is usually best to leave irrigated pasture management to the landowner's discretion. If important riparian is included in the field it might be necessary to fence the riparian zone from the irrigated pasture to protect it from livestock grazing. Usually grazing strategies employed on irrigated pasture are not consistent with proper management of key native riparian plants. In such situations, it may be necessary to apply the guideline series entitled: *The Need for Stream Vegetated Buffers Parts 1 through 3*, Montana Department of Environmental Quality 2008.

Livestock operators often place cows in hayfields during winter months. In such cases the field should be managed at the landowner's discretion and in some instances, it might be necessary to fence out riparian from the hayfield to protect it from grazing.

Stocking Rate

Usually FWP does not require a maximum stocking rate as part of the grazing strategy on easements or Upland Game Bird Habitat Enhancement Projects. In such cases, it is clearly stated in the grazing plan, that the maximum stocking rate will be ultimately determined by the

operator's ability to conform to the grazing system. In other words, the livestock numbers may increase as long as the plan can be followed and livestock movement dates are not compromised. Such an approach is consistent with the reality that, for most easement projects, the primary use of the land is agricultural.

Occasionally a landowner has requested that an upper limit stocking rate be established as a stipulation in the easement. As long as the number of livestock is realistic this is not a problem.

On lands owned by FWP any grazing that occurs will be at stocking levels determined by the agency and approved by the FWP Commission.

Mineral and Other Supplements

On privately owned grazing lands the landowner is given more discretion on locations for placement of mineral block than on FWP lands. However, regardless of land ownership the placing of mineral block within riparian areas will be strongly discouraged. On FWP lands the placement of mineral block will be described as part of the grazing plan. Supplements will be placed away from riparian areas, ponds, and roads. Rocky (stable soil) areas on ridge tops or in the trees are preferred sites.

On FWP lands livestock within pasture grazing systems are not to be fed hay.

Flexibility

Rarely, a severe environmental influence (i.e., fire, drought, grasshoppers) may require a onetime deviation from the prescribed grazing plan. In such cases the landowner is to notify the local FWP representative of the problem. In a timely manner, the local FWP representative, Habitat Section representative, and landowner will meet to discuss the issue and work out a solution. It is important to keep in mind that short term adjustments to the grazing plan must be the exception rather than the rule. Allowing grazing to occur in a pasture scheduled for rest is always a last resort. FWP has managed grazing systems across Montana through a variety of severe environmental events. This experience has shown that when a legitimate problem exists an alternative can usually be found that avoids grazing the pastures scheduled for rest.

EXHIBIT D
MAP IDENTIFYING DESIGNATED ROUTES AND PARKING AREAS

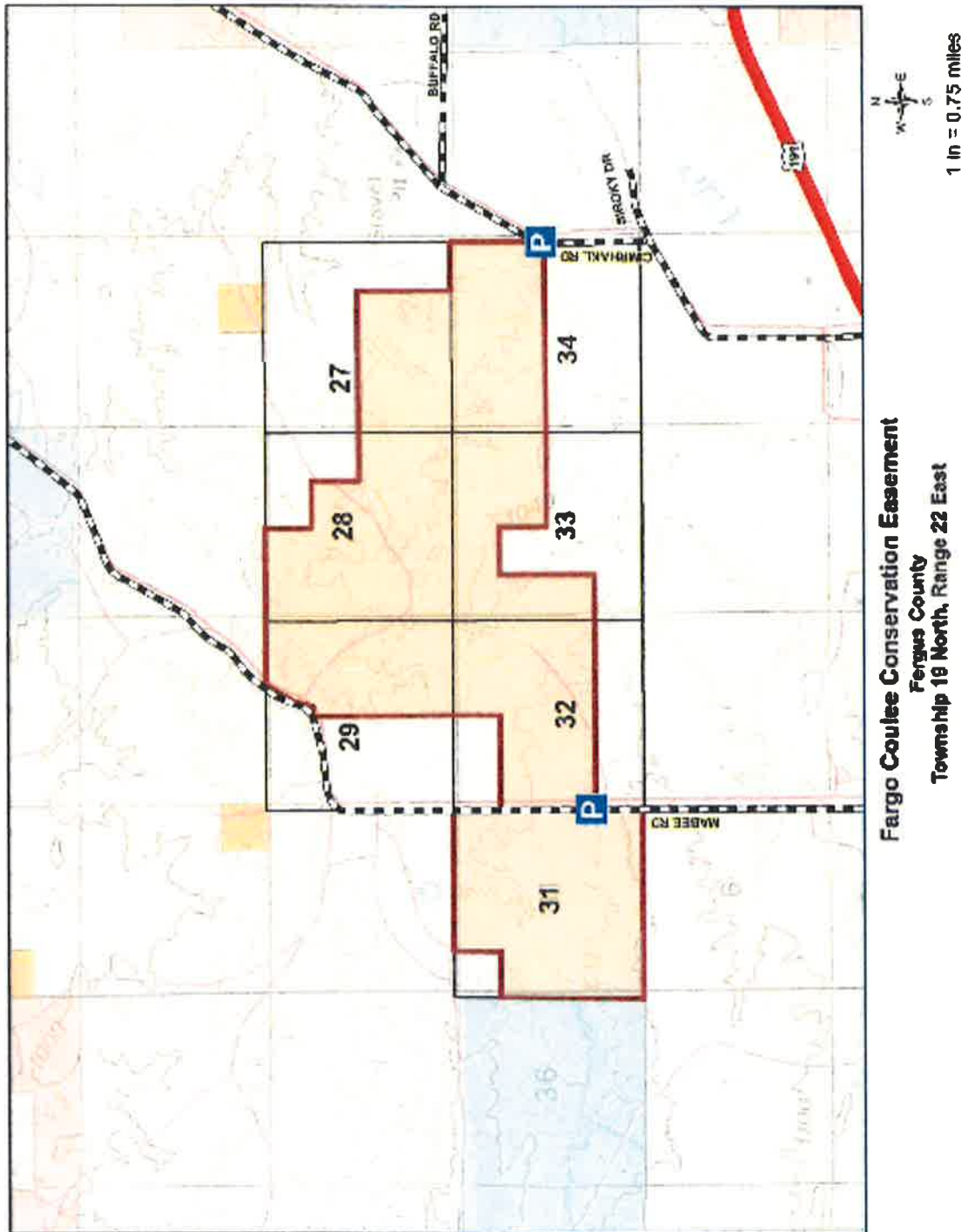


EXHIBIT E

MINIMUM TERMS FOR AGRICULTURAL LAND EASEMENTS

Kathie J. Anderson, as to an undivided 1/3 interest, Toby J. Machler, as to an undivided 1/3 interest, D. Mark Machler as to an undivided 50% of an undivided 1/3 interest, Joel Machler, as to an undivided 25% of an undivided 1/3 interest in Tract I and an undivided ½ interest in Kathie J. Anderson and Toby J. Machler, D. Mark Machler as to an undivided 50% interest of an undivided ½ interest, Joel Machler as to an undivided 25% of an undivided ½ interest, Susan Machler as to an undivided 25% of an undivided ½ interest in Tract II, (Landowners), the Montana Department of Fish, Wildlife, & Parks (Department), and the **United States of America** (the United States), acting by and through the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC) (jointly referred to as the “Parties”) acknowledge that the ALE is acquired by the Department to protect grazing uses and related conservation values by restoring and conserving the Protected Property. Baseline conditions of the Protected Property are set forth in a Baseline Documentation Report, a copy of which is maintained in the files of the Department.

In order to ensure compliance with the Agricultural Conservation Easement Program, 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468, the following rule of interpretation will govern any and all inconsistencies between the ALE and this Exhibit. Notwithstanding any other provision of the ALE, the Parties agree that all present and future use of the Protected Property is and will remain subject to all of the following terms and conditions identified in Section I and II. If the terms and conditions in Section I and II are inconsistent with terms and conditions in other sections of the ALE, Section I and II will control; provided however, if other sections of the ALE have terms and conditions that are consistent with, but more restrictive to the rights of the Landowners than the terms and conditions in Section I, Paragraphs 1, 2, and 3, those more restrictive terms and conditions will control. If other sections of the ALE are more restrictive to the rights of the Landowners than Section I Paragraph 4 and 5 and Section II then Section I Paragraph 4 and 5 and Section II will control.

SECTION I - MINIMUM CONSERVATION DEED RESTRICTIONS

Even if the Protected Property consists of more than one parcel for real estate tax or any other purpose or if it was acquired previously as separate parcels, it will be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement will apply to the Protected Property as a whole.

The terms and conditions of the ALE run with the land and are binding upon the Landowners, the Department and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them must comply with all terms and conditions of this easement, including the following:

1. Agricultural Land Easement Plan. As required by 16 U.S.C. Section 3865a, agricultural production and related uses of the Protected Property are subject to an ALE Plan, as approved by NRCS, to promote the long-term viability of the land to meet the ALE purposes. The ALE Plan

must also be approved by the Landowners and Department. Landowners agree the use of the property will be subject to the ALE Plan on the Protected Property.

The ALE Plan is incorporated by reference and must not include any provisions inconsistent with the conservation purposes of this ALE. The Department and Landowners agree to update the ALE Plan in the event the agricultural uses of the Protected Property change. A copy of the current ALE Plan is kept on file with the Department.

The Department must take all reasonable steps to secure compliance with the ALE Plan. In the event of substantial or ongoing noncompliance with the ALE Plan or the requirement to update the ALE Plan, NRCS may notify the Department. NRCS will give the Department and Landowners a reasonable amount of time, not to exceed 180 days, to take corrective action. If Department fails to enforce the terms of the ALE, including, but not limited to compliance with the ALE Plan, the United States may exercise its right of enforcement.

2. Limitation on Impervious Surfaces. Impervious surfaces will not exceed **2%**, of the Protected Property, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Protected Property, including, but not limited to, paved areas, and any other surfaces that are covered by asphalt or concrete. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Department by this ALE.

. Limitations on Nonagricultural Uses. Any activities inconsistent with the purposes of the ALE are prohibited. The provisions of this ALE limit the types of agricultural operations that can occur on the Protected Property to those that restore or conserve grassland, and protect grazing uses, and related conservation values. The following activities are inconsistent with the purposes of ALE and are specifically prohibited, subject to the qualifications stated below:

A) Subdivision – Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited.

(B) Industrial or Commercial Uses – Industrial or commercial activities on the Protected Property are prohibited except for the following:

- (i) agricultural production and related uses conducted as described in the ALE Plan;
- (ii) the sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures that Department approves in writing as being consistent with the conservation purposes of this Easement;
- (iii) temporary or seasonal outdoor activities or events that do not harm the agricultural use, future viability, and related conservation values of the Protected Property herein protected;
- (iv) commercial enterprises related to agriculture or forestry which do not require buildings or structures, including but not limited to agritourism, processing, packaging, and marketing of farm or forest products; and

(v) small-scale commercial enterprises which do not require buildings or structures and are compatible with agriculture or forestry.

(C) *Construction on the Protected Property* – All new structures and improvements are prohibited except for agricultural structures and utilities to serve them, including on-farm energy structures allowed under **Section I, Paragraph (4)(C)** that neither individually nor collectively have an adverse impact on the grassland, grazing uses and related conservation values of the Protected Property, provided that the utilities or agricultural structures are approved in advance in writing by the Department and are consistent with the ALE Plan described in Section I, Paragraph 1.

Maintenance of existing roads documented on the Baseline Documentation Report is allowed; however, existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by the Department, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property.

Fences may be maintained and replaced and new fences installed only in accordance with the ALE Plan and consistent with grassland species management requirements.

(D) *Granting of easements for utilities and roads* – The granting or modification of easements for utilities and roads is prohibited when the utility or road will adversely impact *the protection of the grazing uses, grassland conservation value*, and related conservation values of the Protected Property as determined by the Department in consultation with the Chief of NRCS.

(E) *Surface Alteration* – Grading, blasting, filling, sod farming, earth removal, or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except as follows:

(i) dam construction in accordance with an ALE plan to create ponds for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement or creation;

(ii) erosion and sediment control pursuant to a plan approved by the Department or;

(iii) soil disturbance activities required in the construction of approved agricultural structures, roads and utilities provided that the required alteration has been approved in writing by Grantee as being consistent with the conservation purpose of this Easement; or (iv) Grazing uses or grassland restoration and conservation activities conducted in accordance with the ALE Plan.

(F) *Oil, Gas, or Mineral Exploration and Extraction* – Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by the Landowners as of the date of this ALE or later acquired by Landowners, using any surface mining, subsurface mining, or dredging method, from

Protected Property is prohibited.

If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this ALE is executed, and their interests have not been subordinated to this ALE, the Landowners must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this paragraph (F).

Any mineral leases or other conveyances of minerals entered into or renewed after the date of this ALE Deed are subordinate to the terms of this Deed and will incorporate by reference in this Deed.

(G) *Crop Cultivation* - Except for grazing uses and grassland restoration and conservation, the cultivation or production of crops, nonperennial forages for human or domestic animal consumption, crop seed production, or planting of orchards, vineyards, berries, tree farms, or other perennial non-grassland agricultural product is prohibited.

4. Preserving Agricultural Uses: No uses will be allowed that decrease the ALE's protection for the grazing uses and related conservation values or adversely impact the restoration or conservation of the grassland, and related conservation values of the Protected Property. Allowed uses of the Protected Property include, the specific uses allowed in Section I, Paragraph (3)(B) (i)-(v) and the following activities, subject to the qualifications stated below:

(A) *Agricultural Production* – The production, processing, and marketing of livestock and agricultural products compatible with restoration and conservation of grassland, grazing uses, and related conservation values is allowed provided it is conducted in a manner consistent with the terms of the ALE Plan described in Section I, Paragraph 1.

(B) *Forest Management and Timber Harvest* – Forest management and timber harvesting is allowed, provided it is carried out to the extent practicable, in accordance with current, generally accepted best management practices for the sites, soils, and terrain of the Protected Property. In addition, if the Protected Property contains 40 contiguous acres of forest or 20 percent of the Protected Property is forestland then forest management and timber harvesting must be performed in accordance with a written forest management plan. The forest management plan must be prepared by a professional resource manager, in consultation with the Grantee. A forest management plan will not be required for the following allowed noncommercial activities: (i) cutting of trees for the construction of allowed roads, utilities and structures on the Protected Property, (ii) cutting of trees for trail clearing, (iii) cutting of trees for domestic use as firewood or for other domestic uses by Grantor, (iv) removal of trees posing an imminent hazard to the health or safety of persons or livestock, or (v) removal of invasive species.

(C) *On-Farm Energy Production* – Renewable energy production is allowed for the purpose of generating energy for the agricultural needs of the Protected Property. Renewable energy sources must be built and maintained within impervious surface limits, with minimal impact on the conservation values of the Protected Property and consistent

with the purposes of the ALE.

(D) *Grassland Uses of the Protected Property* – Landowners are allowed to graze, hay, harvest for hay and non-crop seed production, mow, construct fire breaks, conduct fire pre-suppression and rehabilitation activities, and conduct common grazing practices, including cultural practices, consistent with the provisions and conservation purposes of this ALE. The term "common grazing practices" means those practices customary to the region where the Protected Property is located related to livestock grazing, forage management, and maintenance of infrastructure required to conduct livestock grazing on the Protected Property. Landowners must not hay, mow, or harvest for seed during certain nesting seasons for birds whose populations are in significant decline as identified in the ALE Plan. Determinations of nesting seasons for birds whose populations are in significant decline and the areas of the property affected by this restriction will be set forth within the ALE Plan for the Protected Property that has been approved by Landowners, Department, and NRCS.

SECTION II - PROTECTION OF THE UNITED STATES' INTERESTS

1. United States Right of Enforcement. Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement that it may exercise only if the terms of the ALE are not enforced by the holder of the ALE. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Department, or its successors or assigns, fails to enforce any of the terms of this ALE, as determined in the sole discretion of the Secretary.

In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from the Landowners, including, but not limited to, attorney's fees and expenses related to Landowners violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from the Department, including, but not limited to, attorney's fees and expenses related to Department's violations or failure to enforce the easement against the Landowners up to the amount of the United States contribution to the purchase of the ALE.

The Department will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Department and Landowners are in compliance with the ALE and ALE Plan. If the annual monitoring report is insufficient or is not provided annually, or if the United States has evidence of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the ALE, the ALE Plan, and the United States Cooperative Agreement with the Department, the United States will have reasonable access to the Protected Property with advance notice to Department and Landowners or Landowners representative.

In the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of these restrictions and will give notice to Department and Landowners or Landowners representative at the earliest practicable time.

2. General Disclaimer and Landowners Warranty. The United States, its employees, agents, and assigns disclaim and will not be held responsible for Department's or Landowners negligent acts or omissions or Department's or Landowners breach of any representation, warranty, covenant, or agreements contained in this ALE Deed, or violations of any Federal, State, or local laws, including all Environmental Laws including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or incur

relating to the Protected Property.

Landowners must indemnify and hold harmless United States, their employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which United States may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Landowners negligent acts, omissions, or breach of any representation, warranty, covenant, agreements contained in this Agricultural Land Easement Deed or violations of any Federal, State, or local laws, including all Environmental Laws.

3. Environmental Warranty. Landowners warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Landowners warrant that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Protected Property. Landowners further warrants that it has no actual knowledge of an undisclosed release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law.

Furthermore, Landowners warrant the information disclosed to the Department and United States regarding any past violations or non-compliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

Moreover, Landowners hereby promises to hold harmless and indemnify Department and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Landowners or any other prior owner of the Protected Property. Landowners indemnification obligation will not be affected by any authorizations provided by Department or the United States to Landowners with respect to the Protected Property or any restoration activities carried out by Department at the Protected Property; provided, however, that Department will be responsible for any Hazardous Materials contributed after this

date to the Protected Property by Department.

“Environmental Law” or “Environmental Laws” means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.

“Hazardous Materials” means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment.

4. Extinguishment, Termination, and Condemnation. The interests and rights under this Agricultural Land Easement may only be extinguished or terminated with written approval of the Department and the United States. Due to the Federal interest in this ALE, the United States must review and approve any proposed extinguishment, termination, or condemnation action that may affect its Federal interest in the Protected Property.

With respect to a proposed extinguishment, termination, or condemnation action, the Department and the United States stipulate that the fair market value of the ALE is 65 percent, hereinafter the “Proportionate Share,” of the fair market value of the land unencumbered by this ALE. The Proportionate Share will remain constant over time.

If this ALE is extinguished, terminated, or condemned, in whole or in part, then the Landowners must reimburse Department and the United States an amount equal to the Proportionate Share of the fair market value of the land unencumbered by this ALE. The fair market value will be determined at the time all or a part of this ALE is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by the Department and the United States.

The allocation of the Proportionate Share between the Department and the United States will be as follows: (a) to the Department or its designee, 25 percent of the Proportionate Share; and (b) to the United States 75 percent of the Proportionate Share. Until such time as the Department and the United States receive the Proportionate Share from the Landowners or the Landowners successor or assign, the Department and the United States each have a lien against the Protected Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Department, the Department must reimburse the United States for the amount of the Proportionate Share due to the United States.

5. Amendment. This ALE may be amended only if, in the sole and exclusive judgment of the Department and United States, by and through the Chief of NRCS, such amendment is consistent with the purposes of this ALE and complies with all applicable laws and regulations. The Department must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recordation of the amended ALE, such amendments must be mutually agreed upon by the Department, Landowners, and United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void